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No. 2400

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United
States for the District of Oregon

OREGON & CALIFORNIA RAILROAD

COMPANY, A CORPORATION, *et al.*,

Defendants and Appellants

JOHN L. SNYDER, *et al.*,

Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,

Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA

Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XIV

PAGES 7251-7810

FILED

APR 4 - 1914

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants

OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.*:

A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:

L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,

Special Assistants to the
Attorney General.

No. _____

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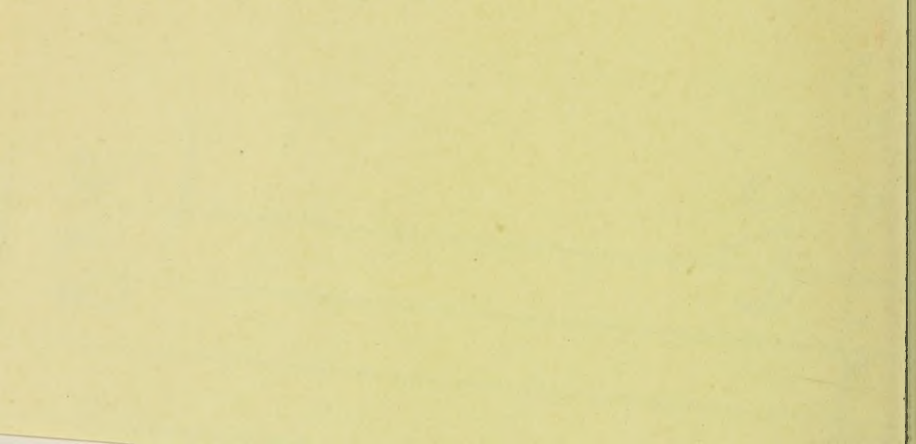
VOLUME XIV

PAGES 7251-7810

Dance →

876

886



DEFENDANTS' EXHIBIT 321.

TOTAL TAXES PAID FROM 1891 TO 1911, IN-
CLUSIVE, ON OREGON AND CALIFOR-
NIA CONGRESSIONAL LANDS.

| County | Total Taxes Paid | Average Acreage | Total Average Tax Tax Per | |
|-------------------------------------|---------------------|--------------------|------------------------------|----------|
| | | | Per Acre | Per Year |
| Benton | \$ 89,963.00 | 46,552.94 | \$1.93 | \$.092 |
| Clackamas | 168,888.91 | 83,298.00 | 2.02 | .096 |
| Columbia | 42,433.60 | 15,391.00 | 2.75 | .135 |
| Coos | 211,147.15 | 83,377.00 | 2.54 | .12 |
| Curry | 12,404.58 | 6,618.00 | 1.89 | .09 |
| Douglas | 533,634.60 | 570,305.00 | .935 | .044 |
| Jackson | 321,613.35 | 428,433.00 | .75 | .035 |
| Josephine | 180,913.50 | 148,781.00 | 1.22 | .058 |
| Klamath | 53,948.21 | 45,297.00 | 1.19 | .057 |
| Lane | 413,723.34 | 320,787.00 | 1.26 | .06 |
| Lincoln (1893 to 1911) | 15,359.37 | 8,445.00 | 1.82 | .09 |
| Linn | 87,170.50 | 75,141.00 | 1.16 | .055 |
| Marion | 51,648.91 | 33,057.00 | 1.56 | .074 |
| Mutlnomah | 14,182.60 | 5,550.00 | 2.55 | .12 |
| Polk | 71,469.45 | 39,017.00 | 1.83 | .09 |

Tillamook (1892

| | | | | |
|-------------------|-----------|-----------|------|------|
| to 1911) . . . | 41,245.02 | 39,724.00 | 1.04 | .05 |
| Washington . . | 34,543.89 | 27,967.00 | 1.23 | .06 |
| Yamhill | 29,920.77 | 31,710.00 | .94 | .045 |

Filed May 10, 1913.

A. H. CANNON,

Clerk U. S. Circuit Court.

DEFENDANTS' EXHIBIT 322.

[Tables enclosed to J. B. Eddy, Tax and Right of Way Agent, in letter from E. Dana Durand, Director of Bureau of the Census, dated August 26, 1912, which is not printed but certified up under order of Court and stipulation of parties:]

STATISTICS OF POPULATION.

Table 4.—Population of States and Territories by Counties, at Each Census: 1790 to 1900.

OREGON.

[Organized as a territory August 14, 1848. Admitted as a state February 14, 1859.]

COUNTIES

vs. *The United States*

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| | 1900 | 1890 | 1880 | 1870 | 1860 | 1850 |
|----------------------------|---------|---------|---------|--------|--------|--------|
| The State..... | 413,536 | 313,767 | 174,768 | 90,923 | 52,465 | 13,294 |
| Baker | 15,597 | 6,764 | 4,616 | 2,804 | ..... | ..... |
| Benton ² | 6,706 | 8,650 | 6,403 | 4,584 | 3,074 | 814 |
| Clackamas | 19,658 | 15,233 | 9,260 | 5,993 | 3,466 | 1,859 |
| Clarke ³ ..... | ..... | ..... | ..... | ..... | ..... | 643 |
| Clatsop | 12,765 | 10,016 | 7,222 | 1,255 | 498 | 462 |
| Columbia | 6,237 | 5,191 | 2,042 | 863 | 532 | ..... |
| Coos | 10,324 | 8,874 | 4,834 | 1,644 | 445 | ..... |
| Crook ⁴ | 3,964 | 3,244 | ..... | ..... | ..... | ..... |
| Curry | 1,868 | 1,709 | 1,208 | 504 | 393 | ..... |
| Douglas ⁵ | 14,565 | 11,864 | 9,596 | 6,066 | 3,203 | ..... |
| Gilliam ⁶ | 3,201 | 3,600 | ..... | ..... | ..... | ..... |
| Grant ⁷ | 5,948 | 5,080 | 4,303 | 2,251 | ..... | ..... |

| COUNTIES | 1900 | 1890 | 1880 | 1870 | 1860 | 1850 |
|------------------------------|---------|--------|--------|--------|-------|-------|
| Harney ⁸ | 2,598 | 2,559 | ..... | ..... | ..... | ..... |
| Jackson ⁹ | 13,698 | 11,455 | 8,154 | 4,778 | 3,736 | ..... |
| Josephine ⁹ | 7,517 | 4,878 | 2,485 | 1,204 | 1,623 | ..... |
| Klamath ¹⁰ | 3,970 | 2,444 | ..... | ..... | ..... | ..... |
| Lake ¹⁰ | 2,847 | 2,604 | 2,804 | ..... | ..... | ..... |
| Lane | 19,604 | 15,198 | 9,411 | 6,426 | 4,780 | ..... |
| Lewis ³ ..... | ..... | ..... | ..... | ..... | ..... | 558 |
| Lincoln ² | 3,575 | ..... | ..... | ..... | ..... | ..... |
| Linn | 18,603 | 16,265 | 12,676 | 8,717 | 6,772 | 994 |
| Malheur ¹ | 4,203 | 2,601 | ..... | ..... | ..... | ..... |
| Marion | 27,713 | 22,934 | 14,576 | 9,965 | 7088 | 2,749 |
| Morrow ¹¹ | 4,151 | 4,205 | ..... | ..... | ..... | ..... |
| Multnomah | 103,167 | 74,884 | 25,203 | 11,510 | 4,150 | ..... |

| COUNTIES | 1900 | 1890 | 1880 | 1870 | 1860 | 1850 |
|------------------------------|--------|--------|--------|-------|-------|-------|
| Polk | 9,923 | 7,858 | 6,601 | 4,701 | 3,625 | 1,051 |
| Sherman ¹² | 3,477 | 1,792 | ..... | ..... | ..... | ..... |
| Tillamook ² | 4,471 | 2,932 | 970 | 408 | 95 | ..... |
| Umatilla ¹³ | 18,049 | 13,381 | 9,607 | 2,916 | ..... | ..... |
| Umpqua ⁵ ..... | ..... | ..... | ..... | ..... | 1,250 | ..... |
| Union ¹⁴ | 16,070 | 12,044 | 6,650 | 2,552 | ..... | ..... |
| Wallowa ¹⁴ | 5,538 | 3,661 | ..... | ..... | ..... | ..... |
| Wasco ¹⁵ | 13,199 | 9,183 | 11,120 | 2,509 | 1,689 | ..... |
| Washington | 14,467 | 11,972 | 7,082 | 4,261 | 2,801 | 2,652 |
| Wheeler ¹⁶ | 2,443 | ..... | ..... | ..... | ..... | ..... |
| Yamhill | 13,420 | 10,692 | 7,945 | 5,012 | 3,245 | 1,512 |

- ¹Malheur organized from part of Baker in 1877.
- ²Lincoln organized from parts of Benton and Tillamook in 1893.
- ³Now in the state of Washington.
- ⁴Organized from part of Wasco in 1882 and part taken to form part of Wheeler in 1899.
- ⁵Umpqua annexed to Douglas in 1862.
- ⁶Organized from parts of Umatilla and Wasco in 1885 and part taken to form part of Wheeler in 1899.
- ⁷Parts taken to form Harney in 1889 and part of Wheeler in 1899.
- ⁸Organized from part of Grant in 1889.
- ⁹Part of Jackson annexed to Josephine between 1880 and 1890.
- ¹⁰Klamath organized from part of Lake in 1882.
- ¹¹Organized from part of Umatilla in 1885.

¹²Organized from part of Wasco in 1889; part of Wasco annexed since 1890.

¹³Parts taken to form Morrow and part of Gilliam in 1885.

¹⁴Wallowa organized from part of Union in 1887; part of Union annexed to Wallowa since 1890.

¹⁵Parts taken to form Crook in 1882, Sherman in 1889, part of Gilliam in 1885, and part annexed to Sherman since 1890.

¹⁶Organized from parts of Crook, Gilliam, and Grant in 1899.

OREGON

Population 1860-1880

| | 1880. | 1870. | 1860. |
|-------------------------|-------|-----------|---------|
| Albany | 1,867 | (a) 1,992 | .... |
| Ashland | 842 | (b) | 327 |
| Astoria | 2,803 | 639 | 252 |
| Brownsville | 143 | (a) 788 | .... |
| Central Point ..... | .... | .... | .... |
| Coquille City | 176 | .... | .... |
| Corvallis | 1,128 | (b) | 531 |
| Dallas | 670 | (a) 795 | (a) 450 |
| Empire City (precinct) | 412 | 381 | 176 |
| Eugene | 1,117 | 861 | 1,183 |
| Florence | 68 | .... | .... |
| Forest Grove..... | 547 | (a) 922 | .... |
| Gardiner | 576 | 206 | .... |
| Grants Pass (precinct). | (b) | .... | .... |
| Harrisburg | 422 | (a) 1,014 | .... |
| Hillsboro | 402 | (a) 796 | .... |
| Independence | 691 | .... | 425 |
| Jacksonville | 839 | (b) | 892 |
| Junction | 428 | .... | .... |
| Kerbyville | 75 | .... | .... |
| Klamath Falls (c)..... | 250 | .... | .... |
| Lafayette | 396 | (a) 655 | (a) 417 |
| Lebanon | 270 | (a) 515 | .... |
| Marshfield | 642 | (a) 402 | |
| McMinnville | 670 | 388 | |
| Medford | | | |
| Monroe | 135 | (b) | |

vs. The United States

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| | 1880. | 1870. | 1860. |
|---|--------|-----------|---------|
| Myrtle Point..... | 52 | | |
| Newport | 52 | (b) | (b) |
| Oakland | 369 | | (a) 357 |
| Oregon City..... | 1,263 | 1,382 | 889 |
| Portland | 17,577 | 8,293 | 2,874 |
| Rainier (precinct)..... | 372 | 116 | 85 |
| Roseburg | 822 | .... | (a) 835 |
| St. Helens..... | 209 | (a) 144 | .... |
| Salem | 2,538 | (a) 1,139 | .... |
| Scottsburg | 63 | (a) 101 | .... |
| Springfield | 160 | (a) 640 | (a) 398 |
| Tillamook or Lincoln (precinct) (d)..... | 499 | 623 | .... |
| Toledo (precinct)..... | 232 | (b) | (b) |
| (a) Population of precinct. | | | |
| (b) Not separately returned. | | | |
| (c) Returned as Linkville in 1880. | | | |
| (d) In Marion County. | | | |

DEFENDANTS' EXHIBIT 323.

Population of Certain Counties and Towns for Three
Years.

| | 1910 | 1900 | 1890 |
|-----------------------|--------|--------|--------|
| Benton County..... | 10,663 | 6,706 | 8,650 |
| Corvallis | 4,552 | 1,819 | 1,527 |
| Philomath | 505 | 343 | |
| Clackamas County..... | 29,931 | 19,658 | 15,233 |
| Estacada | 405 | | |
| Milwaukee | 860 | | |

| | | | |
|---------------------|--------|--------|--------|
| Oregon City..... | 4,287 | 3,494 | 3,062 |
| Douglas County..... | 19,674 | 14,565 | 11,864 |
| Oakland | 467 | 365 | 339 |
| Canyonville | 149 | | |
| Roseburg | 4,738 | 1,690 | 1,472 |
| Gardiner | 391 | 286 | 229 |
| Glendale | 646 | | |
| Myrtle Creek..... | 429 | 189 | |
| Drain | 335 | 193 | |
| Riddle /..... | 187 | 131 | |
| Yoncolla | 233 | | |
| Lane County..... | 33,783 | 19,604 | 15,198 |
| Cresswell | 367 | | |
| Cottage Grove..... | 1,834 | 974 | |
| Eugene | 9,009 | 3,236 | |
| Florence | 311 | 222 | |
| Junction City..... | 759 | 506 | |
| Springfield | 1,838 | 353 | 371 |
| Coburg | 613 | | |
| Lincoln County..... | 5,587 | 3,575 | |
| Newport | 721 | 256 | 121 |
| Toledo | 541 | 302 | |
| Linn County..... | 22,662 | 18,603 | 16,265 |
| Albany | 3,275 | 3,149 | 3,079 |
| Halsey | 337 | 294 | 270 |
| Brownsville | 919 | 698 | 580 |
| Harrisberg | 453 | 502 | 413 |
| Lebanon | 1,820 | 922 | 829 |
| Scio | 295 | 346 | 253 |

| | | | |
|--|--------|--------|--------|
| <i>vs. The United States</i> | | | 7261 |
| Sodaville | 110 | 178 | 66 |
| Sweet Home..... | 202 | | |
| Waterloo | 83 | 59 | |
| Marion County..... | 39,780 | 27,713 | 22,934 |
| Aurora | 190 | 122 | |
| Butterville | 49 | | |
| Gervais | 276 | 224 | |
| Hubbard | 283 | 213 | 117 |
| Jefferson | 415 | 273 | 307 |
| Mt. Angel..... | 545 | 537 | |
| St. Paul..... | 103 | | |
| Salem | 14,094 | 4,258 | |
| Silverton | 1,588 | 656 | 511 |
| Stayton | 703 | 324 | 381 |
| Sublimity | 138 | | |
| Turner | 191 | | |
| Woodburn | 1,616 | 828 | 405 |
| Polk County | 13,469 | 9,923 | 7,855 |
| Dallas | 2,124 | 1,271 | 848 |
| Falls City..... | 969 | 269 | |
| Independence | 1,160 | 909 | |
| Monmouth | 493 | 606 | |
| Grande Ronde Indian Reservation | 368 | 402 | |
| Washington County..... | 21,522 | 14,467 | 11,972 |
| Beaverton | 386 | 249 | |
| Cornelius | 459 | 246 | |
| Forest Grove..... | 1,772 | 1,096 | 665 |
| Hillsboro | 2,016 | 980 | |
| Sherwood | 115 | 111 | |

Yamhill County.....

| | | | |
|-------------------|-------|-------|-------|
| Amity | 407 | 292 | |
| McMinnville | 2,400 | 1,420 | 1,368 |
| Carlton | 386 | 145 | |
| Yamhill | 325 | 254 | |
| Dundee | 196 | 124 | |
| Dayton | 453 | 293 | 304 |
| Lafayette | 412 | 359 | 365 |
| Newberg | 2,260 | 945 | 514 |
| Sheridan | 1,021 | 466 | 299 |
| Willamina | 376 | | |

**DEFENDANTS' EXHIBITS 324-325-326-327-328-
329-330.**

Purports to be statements of the summaries of the assessment rolls of the various counties of the State of Oregon as equalized by the County Boards of Equalization, compiled by the Board of State Tax Commissioners for the years 1911, 1910 and 1909, and as compiled by the Secretary of State for the years 1908, 1907, 1906, 1904, 1903, 1902, 1901 and 1900, showing, by counties, number of acres of tillable lands, value of tillable lands, number of acres of non-tillable lands, value of non-tillable lands, value of town and city lots, improvements on town and city lots, etc., and showing total value of taxable property as equalized by the County Boards of Equalization for the respective years, and as equalized by the State Tax Commissioners for the years 1911, 1910 and 1909.

These exhibits are not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 331.

Purports to be a statement of taxes paid upon Congressional lands in same items including other property from the years 1873 to 1890, both inclusive, in the counties of Benton, Lane, Linn, Marion, Washington and Yamhill, and is as follows:

| Year | Acres | Valuation | Tax | |
|------|-------------|-------------|-----------|------|
| 1873 | 13,363 | | \$ 300.68 | |
| 1874 | 13,628 | \$ 4,087 | 85.83 | Paid |
| 1875 | 12,839 | 3,206 | 48.03 | Paid |
| 1876 | 12,844 | 3,206 | 73.76 | Paid |
| 1877 | Not totaled | 3,029 | 48.46 | Paid |
| 1878 | 11,714 | 2,967 | 51.95 | Paid |
| 1879 | 10,553 | 3,165 | | Paid |
| 1880 | 9,973 | 2,992 | 53.86 | Paid |
| 1881 | 9,538 | 12,000 | 186.00 | Paid |
| 1882 | 9,538 | 12,000 | 192.00 | Paid |
| 1883 | 7,815 | 9,769 Inc. | 1,337.96 | Paid |
| 1884 | 7,797 | 9,700 Inc. | 1,217.20 | Paid |
| 1885 | Not totaled | 9,295 Del. | | Paid |
| 1886 | 7,331 | 16,327 Inc. | 971.42 | Paid |
| 1887 | 7,331 | 16,927 Inc. | 1,381.50 | Paid |
| 1888 | 7,010 | 8,762 Inc. | 1,307.86 | Paid |
| 1889 | 6,642 | 8,302 | 180.15 | |
| 1890 | 7,414 | 9,267 | 174.61 | |

OREGON AND CALIFORNIA RAILROAD
COMPANY CONGRESSIONAL LANDS
IN OREGON

DOUGLAS COUNTY

| Year | Acres | Valuation | |
|------|--------|---------------|-----------------------|
| 1878 | 11,434 | \$141,435 | Agricultural |
| 1879 | 11,754 | 141,435 | Agricultural |
| 1880 | 10,155 | 142,220 | Agricultural |
| 1881 | 11,680 | Not valued | Agricultural |
| 1882 | 11,534 | Marked paid | Agricultural |
| 1883 | 11,199 | 22,398 | Called patented |
| 1884 | 2,240 | ..... | (With other property) |
| 1885 | 11,786 | 312,106 | |
| 1888 | 12,479 | 15,590 | |
| 1889 | 12,720 | No valuation. | |
| 1890 | 12,720 | No valuation | |

LANE COUNTY.

| Year | Acres | Valuation | Tax | |
|------|--------|-----------|-----------|---------------------------|
| 1874 | 40,689 | \$12,207 | \$ 170.89 | Paid |
| 1875 | 39,553 | 11,866 | 177.99 | Paid |
| 1876 | 38,900 | 11,670 | 175.00 | Paid |
| 1777 | 38,152 | 11,445 | 206 1/2 | Marked paid but erased |

| Year | Acres | Valuation | Tax | |
|------|--------|-----------|----------|------|
| 1878 | 52,253 | 14,000 | 196.00 | Paid |
| 1878 | 29,986 | 11,994 | 167.90 | Paid |
| 1879 | 56,078 | 15,000 | 225.00 | Paid |
| 1880 | 55,949 | 15,106 | 241.30 | Paid |
| 1880 | 29,986 | 11,994 | 191.90 | Paid |
| 1881 | 55,979 | 15,115 | 256.95 | Paid |
| 1881 | 29,986 | 11,994 | 203.90 | Paid |
| 1882 | 29,986 | 11,994 | 179.91 | Paid |
| 1883 | 54,093 | 16,228 | 259.65 | Paid |
| 1884 | 51,583 | 15,475 | 247.60 | Paid |
| 1884 | 29,986 | 12,000 | 196.00 | Paid |
| 1885 | 29,986 | 12,000 | 180.00 | Paid |
| 1886 | 48,364 | 14,510 | 203.15 | Paid |
| 1886 | 29,986 | 12,000 | ..... | Paid |
| 1887 | 47,483 | 12,245 | 249.30 | Paid |
| 1888 | 53,332 | 17,950 | 287.20 | Paid |
| 1889 | .... | .... | 1,507.63 | |
| 1890 | 41,806 | 83,616 | 1,873.92 | Paid |

The assessment for 1890 was Sheriffs.

| | | | | |
|------|---------|---------|-----------|------------------------------------|
| 1890 | 261,212 | 522,415 | 11,754.56 | No evidence that this was paid. |
|------|---------|---------|-----------|------------------------------------|

LINN COUNTY

| Year | Acres | Total Tax | |
|------|-------------|-----------|------------------------------|
| | Not | | |
| 1883 | computed | \$ 187.44 | |
| 1884 | 32,184 | 4,404.40 | Included with other property |
| 1885 | 30,695 | 2,785.57 | Included with other property |
| 1886 | 31,324 | 3,047.81 | Included with other property |
| 1887 | 30,089 | 2,486.50 | Included with other property |
| 1888 | 29,844 | 165.18 | |
| 1889 | 23,475 | 3,557.98 | Included with other property |
| | Springfield | | |
| 1889 | Br | 1,515.96 | |
| 1890 | 23,475 | 3,389.03 | Included with other property |
| | Spg. Branch | 1,515.96 | |

MARION COUNTY

| Year | Acres | Value | |
|------|-----------|---------|------|
| 1880 | 19,934 | \$5,000 | Paid |
| 1881 | 19,691 | 7,000 | |
| 1882 | 18,753 | 5,700 | |
| 1883 | 18,431 | 6,000 | Paid |
| 1884 | 15,596 | 5,500 | |
| 1885 | 16,094.98 | 8,000 | |
| 1886 | 15,622 | 8,000 | |
| 1887 | 15,464 | 15,464 | |

| Year | Acres | Valuation |
|------|--------|-----------|
| 1889 | 15,123 | 15,123 |
| 1890 | 15,949 | 19,939 |
| 1878 | 22,434 | 6,730 |
| 1879 | 4,536 | 1,360 |

All included with road bed and station grounds.

WASHINGTON COUNTY

| Year | Acres | Value | Tax |
|------|-------|--------|--------|
| 1883 | 5,822 | 8,700 | 156.60 |
| 1884 | 5,382 | 9,000 | 144 |
| 1885 | 5,373 | 9,000 | 126 |
| 1886 | 5,333 | 9,000 | 135 |
| 1887 | 5,253 | 8,900 | 160.20 |
| 1888 | 5,213 | 8,850 | 141.60 |
| 1889 | 5,077 | 8,880 | 161.16 |
| 1890 | 5,418 | 26,400 | 432 |

YAMHILL COUNTY

| Year. | Acres. | Valuation | Tax. |
|-------|--------------|-------------|-----------|
| 1877 | 17,875.75 | \$13,406.83 | \$ 234.61 |
| 1878 | Not computed | 7,717 | 154.34 |
| 1879 | 14,600 | 7,300 | |
| 1881 | 11,677 | 6,000 | |
| 1882 | 10,842 | 6,000 | 61.13 |

| Year. | Acres. | Valuation | Tax. | |
|-------|--------------|-----------|----------|-------|
| 1884 | 9,550.80 | 4,775 | 83.57 | |
| 1885 | 9,330 | 4,669 | 2,035.04 | incl. |
| 1886 | 9,046 | 4,675 | 2,044.39 | incl. |
| 1887 | 8,532 | 4,263 | 2,501.19 | incl. |
| 1888 | Not computed | 4,353 | 2,732.12 | incl. |
| 1889 | Not computed | 6,130 | 134.86 | |
| 1890 | Not computed | 9,524 | 209.52 | |

DEFENDANTS' EXHIBIT 332

Purports to be two sheets of standard map of the Oregon & California Railroad Company purporting to show lands of the Booth-Kelly Lumber Company colored in red, and the Wentworth lands colored in green.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 333

Is a certified copy of an Act of Congress, approved August 20, 1912, entitled "An Act Supplementing the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled 'Joint resolution instructing the Attorney General to institute certain suits,' and so forth," and is as follows:

[PUBLIC—No. 278.]

[H. R. 22002.]

An Act Supplementing the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled "Joint resolution instructing the Attorney General to institute certain suits," and so forth.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all claims of forfeiture heretofore or hereafter asserted by the Attorney General on behalf of the United States in or by any and all suits in equity, actions at law, or other judicial proceedings instituted pursuant to the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled "Joint resolution instructing the Attorney General to institute certain suits," and so forth, be, and the same are hereby ratified and confirmed and are hereby declared to be of the same force and effect as declarations of forfeiture by the Congress of the United States.

SEC. 2. That none of the lands reverting to the United States by virtue of any right of forfeiture thereto as aforesaid shall be or become subject to entry under any of the public-land laws of the United States, or to the initiation of any right whatever under any of the public-land laws of the United States.

SEC. 3 That no suits in equity, actions at law, or other judicial proceedings shall be instituted pursuant to said joint resolution approved April thirtieth, nineteen

hundred and eight, that shall involve any lands sold by the Oregon and California Railroad Company prior to April thirtieth, nineteen hundred and eight, unless the same shall be instituted within one year from the date of the approval of this Act: *Provided*, That this section shall not be construed to apply to any suits in equity heretofore instituted, nor to any parties thereto, nor to any of the lands involved therein, nor to the institution of any further suits in equity, actions at law, or other judicial proceedings relating to any of the lands that are involved in said pending suits.

SEC. 4. That the Attorney General is hereby authorized to compromise in the manner hereinafter provided any suit heretofore or hereafter instituted pursuant to the provision of said joint resolution approved April thirtieth, nineteen hundred and eight, involving lands purchased from the said Oregon and California Railroad Company prior to September fourth, nineteen hundred and eight. In any such suit the Attorney General may, in his discretion, stipulate with the defendant or defendants who purchased said lands, or are the successors or assigns of such purchaser or purchasers, that decree shall be entered adjudging that the lands involved therein have been and are forfeited to the United States. Such decree shall recite that the same was entered pursuant to such stipulation. If said purchaser defendant or defendants, or their successors or assigns, shall within six months from the entry of said decree file with the Secretary of the Interior a certified copy of said decree, together with an application to purchase

all of the lands adjudged by said decree to have been forfeited to the United States as aforesaid, and shall pay to the Treasurer of the United States the sum of two dollars and fifty cents per acre for all of the lands so applied for, the Secretary of the Interior shall cause patents to be issued conveying to said purchaser defendant or defendants, and their successors and assigns, all of the right, title, and interest of the United States in and to all of said lands; and such purchase shall operate as a compromise of any and all claims of the United States for waste or trespass upon any of said lands committed by such purchaser defendant or defendants or their successors or assigns, respectively: *Provided*, That the benefits of this section shall not be exercised or enjoyed except in cases where decree shall have been entered pursuant to stipulation entered into as aforesaid: *And provided further*, That the provisions of this section shall not apply to any lands that have not been patented to said Oregon and California Railroad Company: *And provided further*, That the aforesaid privilege of purchasing said forfeited lands shall not be exercised or enjoyed as to less than all of the lands involved in said suits, respectively, the purpose hereof being to prevent the elimination from any purchase of any lands from which timber has been removed or upon which any other waste or trespass has been committed, or the elimination of any part whatever of any land from such purchase.

SEC. 5 That the provisions of section four of this Act shall not be construed to apply to the suit involving

approximately two million three hundred and sixty thousand acres, now pending in the District Court of the United States for the District of Oregon, wherein the United States of America is complainant and the Oregon and California Railroad Company, the Southern Pacific Company, Stephen T. Gage, the Union Trust Company, and others are defendants, being designated in the records and files of said court as suit numbered thirty-three hundred and forty; nor shall the provisions of said section four of this Act be construed to apply to any of the lands involved in said last described suit; nor to create any rights or privileges whatever in favor of any of the defendants therein.

SEC 6. That nothing in this Act contained, nor action taken pursuant to the provisions of this Act, shall be construed as a condonation of any of the breaches of any of the conditions or provisions annexed to any of the grants designated in said joint resolution approved April thirtieth, nineteen hundred and eight, nor as a waiver of any of said conditions or provisions, nor as a waiver of any right of forfeiture in favor of the United States on account of any breach or breaches of any of said conditions, nor as a waiver of any cause of action or remedy of the United States on account of any breach or breaches of any of said conditions or provisions, nor as a waiver of any other rights or remedies existing in favor of the United States.

Approved, August 20, 1912.

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 334

is "Report No. 1008, House of Representatives, 62d Congress, 2d Session," as follows:

OREGON AND CALIFORNIA RAILROAD
LAND GRANT.

July 16, 1912.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Robinson, from the Committee on Public Lands, submitted the following

REPORT.

[To accompany H. R. 22002.]

The Committee on the Public Lands, having under consideration the bill (H. R. 22002) supplementing the joint resolution approved April 30, 1908, entitled "Joint resolution instructing the Attorney General to institute certain suits," etc., recommend the adoption of the following amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That all claims of forfeiture heretofore or hereafter asserted by the Attorney General on behalf of the United States in or by any and all suits in equity, actions at law, or other judicial proceedings instituted pursuant to the joint resolution of Congress approved April thir-

tieth, nineteen hundred and eight, entitled "Joint Resolution instructing the Attorney General to institute certain suits," and so forth, be, and the same are hereby, ratified and confirmed and are hereby declared to be of the same force and effect as declarations of forfeiture by the Congress of the United States.

Sec. 2. That none of the lands reverting to the United States by virtue of any right of forfeiture thereto as aforesaid shall be or become subject to entry under any of the public-land laws of the United States or to the initiation of any right whatever under any of the public-land laws of the United States.

Sec. 3. That no suits in equity, actions at law, or other judicial proceedings shall be instituted pursuant to said joint resolution approved April thirtieth, nineteen hundred and eight, that shall involve any lands sold by the Oregon and California Railroad Company prior to April thirtieth, nineteen hundred and eight, unless the same shall be instituted within one year from the date of the approval of this act; *Provided*, That this section shall not be construed to apply to any suits in equity heretofore instituted, nor to any of the parties thereto, nor to any of the lands involved therein, nor to the institution of any further suits in equity, actions at law, or other judicial proceedings relating to any of the lands that are involved in said pending suits.

Sec. 4. That the Attorney General is hereby authorized to compromise, in the manner hereinafter provid-

ed, any suit heretofore or hereafter instituted pursuant to the provisions of said joint resolution approved April thirtieth, nineteen hundred and eight, involving lands purchased from the said Oregon and California Railroad Company prior to September fourth, nineteen hundred and eight. In any such suit the Attorney General may, in his discretion, stipulate with the defendant or defendants who purchased said lands, or are the successor or assigns of such purchaser or purchasers, that decree shall be entered adjudging that the lands involved therein have been and are forfeited to the United States. Such decree shall recite that the same was entered pursuant to such stipulation. If said purchaser defendant or defendants, or their successors or assigns, shall within six months from the entry of said decree file with the Secretary of the Interior a certified copy of said decree, together with an application to purchase all of the lands adjudged by said decree to have been forfeited to the United States as aforesaid, and shall pay to the Treasurer of the United States the sum of two dollars and fifty cents per acre for all of the lands so applied for, the Secretary of the Interior shall cause patents to be issued conveying to said purchaser defendant or defendants, and their successors and assigns, all of the right, title, and interest of the United States in and to all of said lands; and such purchase shall operate as a compromise of any and all claims of the United States for waste or trespass upon any of said lands committed by such purchaser defendant or defendants, or their successors or assigns, respectively; *Provided*, That the

benefits of this section shall not be exercised or enjoyed except in cases where decree shall have been entered pursuant to stipulation entered into as aforesaid: and *provided further*, That the provisions of this section shall not apply to any lands that have not been patented to said Oregon and California Railroad Company: *And provided further*, That the aforesaid privilege of purchasing said forfeited lands shall not be exercised or enjoyed as to less than all of the lands involved in said suits, respectively, the purpose hereof being to prevent the elimination from any such purchase of any lands from which timber has been removed or upon which any other waste or trespass has been committed, or the elimination of any part whatever of any land from such purchase.

Sec. 5. That the provisions of section four of this act shall not be construed to apply to the suit, involving approximately two million three hundred and sixty thousand acres, now pending in the District Court of the United States for the District of Oregon, wherein the United States of America is complainant and the Oregon and California Railroad Company, Southern Pacific, Stephen T. Gage, Union Trust Company, and others are defendants, being designated in the records and files of said court as suit numbered thirty-three hundred and forty; nor shall the provisions of said section four of this act be construed to apply to any of the lands involved in said last-described suit, nor to create any rights or privileges whatever in favor of any of the defendants therein.

Sec. 6. That nothing in this act contained, nor action taken pursuant to the provisions of this act, shall be construed as a condonation of any of the breaches of any of the conditions or provisions annexed to any of the grants designated in said joint resolution approved April thirtieth, nineteen hundred and eight, nor as a waiver of any of said conditions or provisions, nor as a waiver of any right of forfeiture in favor of the United States on account of any breach or breaches of any of said conditions, nor as a waiver of any cause of action or remedy of the United States on account of any breach or breaches of any of said conditions or provisions, nor as a waiver of any other rights or remedies existing in favor of the United States.

The committee considered, in connection with H. R. 22002, the bill H. R. 23719, which is similar. Many amendments being recommended to the text of the bill, it is thought simpler to report one amendment in the nature of a substitute. This will probably save much time in the consideration of the bill by the House.

This measure is supplemental to Senate joint resolution 48 (Public Resolution No. 18), approved April 30, 1908, which is as follows:

JOINT RESOLUTION Instructing the Attorney General to institute certain suits, and so forth.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Attorney General of the United

States be, and he hereby is, authorized and directed to institute and prosecute any and all suits in equity, actions at law, and other proceedings which he may deem adequate and appropriate to enforce any and all rights and remedies of the United States of America in any manner arising or growing out of or pertaining to either or any of the following described acts of Congress, to-wit: "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon," approved July twenty-fifth, eighteen hundred and sixty-six, as amended by the acts approved June twenty-fifth, eighteen hundred and sixty-eight, and April tenth, eighteen hundred and sixty-nine; also "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from the navigable waters of Coos Bay to Roseburg, in said state," approved March third, eighteen hundred and sixty-nine; also "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinville, in the State of Oregon," approved May fourth, eighteen hundred and seventy, including all rights and remedies in any manner relating to the lands, or any part thereof, granted by either or any of said acts; and in and by any and all such suits, actions, or proceedings the Attorney General shall, in such manner as he shall deem appropriate, assert all rights and remedies existing in favor of the United States, relating to the subject of such suits, actions, and proceedings, including the claim on behalf of the United States that the

lands granted by each of said acts, respectively, or any part thereof, have been and are forfeited to the United States by reason of any breaches or violations of any of the terms or conditions of either or any of said acts which may be alleged and established in any such suits, actions, or proceedings; it not being intended hereby to determine the right of the United States to any such forfeiture or forfeitures, but it being intended to fully authorize the Attorney General in and by such suits, actions, or proceedings to assert on behalf of the United States and the court or courts before which such suits, actions, or proceedings may be instituted or pending to entertain, consider, and adjudicate the claim and right of the United States to such forfeiture or forfeitures, and if found to enforce the same: *Resolved further*, That the authority and direction hereinbefore given shall extend to any and all suits, actions, or proceedings which may be instituted or pending under the authority of the Attorney General at the time of the adoption and approval hereof.

Under authority contained in said resolution the United States instituted one suit against the Oregon & California Railroad Co. and others for the purpose of declaring a forfeiture, and for other purposes. This suit involved approximately 2,400,00 acres of land which said railroad company has not sold and claims title to by virtue of the grants hereinafter referred to.

In addition to this suit against the railroad company the Government also brought 45 suits against various

grantees of the railroad company. The lands involved in these suits aggregate approximately 400,000 acres of land. The purpose of this legislation are, first, to confirm the proceedings of forfeiture already had by the Government, and, second, to authorize a compromise of the 45 suits against the purchasers. No compromise is to be made of the main suit against the railroad company for the 2,400,000 acres of land unsold and still claimed by the railroad company. That is to be litigated to final decree.

The history of the legislation and circumstances out of which grows the necessity for this measure is interesting, extending over a period of almost half a century.

July 25, 1866, Congress granted alternate sections of land for 20 miles on either side of a line to such railroad company as might be designated by the Legislature of Oregon, to build from Portland south to the California line, and to the California & Oregon Railroad Co., which was already incorporated under the laws of California, to construct through the Sacramento Valley to the Oregon line. At that time no railroad company was organized in Oregon. The act of July 25, 1866, did not require the railroad company to sell to settlers.

One Joseph Gaston caused to be organized the Oregon Central Railroad Co. in October, 1866, for the purpose of taking the benefits of said grant. The act of 1866 prescribed that before any railroad could re-

ceive the benefits of the grant it must be designated by the Oregon Legislature as a proper company for that purpose. The Oregon Legislature designated the Oregon Central Railroad Co., organized by Gaston, but this company failed to build the 20 miles of road within two years, as prescribed by the act.

One Ben Holladay, then of Salem, Oreg., was prominent in the organization of another railroad also called the "Oregon Central Railroad Co."

A resolution extending the time for the completion of the 20 miles of work was passed, but before Gaston's company could avail itself of the grant, Holladay and his company succeeded in having the Oregon Legislature rescind its action in designating Gaston's company as the beneficiary, and also succeeded in having Holladay's company designated. Holladay was also active in securing the passage of the act of April 10, 1869 which is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July twenty-fifth, eighteen hundred and sixty-six, be, and the same is hereby, amended so as to allow any railroad company heretofore designated by the Legislature of the State of Oregon, in accordance with the first section of said act, to file its assent to such act in the De-

partment of the Interior within one year from the date of the passage of this act, any such filing of its assent, if done within one year from the passage hereof, shall have the same force and effect to all intents and purposes as if each assent had been filed within one year after the passage of said act: *Provided*, That nothing herein shall impair any rights heretofore acquired by any railroad company under said act, nor shall said act or this amendment be construed to entitle more than one company to a grant of land: *And provided further*, That the lands granted by the act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre.

Approved, April 10, 1869.

It is out of the last proviso contained in this act that the controversies involved in this legislation have arisen.

After the passage of this act of April 10, 1869, Holladay's company began and completed, within the time authorized by the extension act, 20 miles of road, and Gaston's company abandoned work, withdrew from the field, and left Holladay's company as the only applicant for the grant.

Confusion arose out of the fact that both Gaston's and Holladay's company were named the "Oregon Central Railroad Co."

Holladay's company was reorganized in 1870, and thereafter was known as the "Oregon & California Rail-

road Co.” Subsequently, Gaston secured the grant of May 4, 1870, to his Oregon Central Railroad Co., in part as follows:

Sec. 4. An be it further enacted that the said alternate sections of land granted by this act, excepting only such as are necessary for the company to reserve for depots, stations, sidetracks, wood yards, standing ground, and other needful uses in operating the road shall be sold by the company only to actual settlers in quantities not exceeding one hundred and sixty acres, or a quarter section, to any one settler, and at prices not exceeding two dollars and fifty cents per acre.

This grant, which is known as the West Side grant, comprised only 128,000 acres of land. In 1880, after Gaston's Oregon Central Railroad Co. had completed the 47 miles of road, the Oregon & California Railroad Co. secured by conveyance all the rights, privileges, and franchises of said West Side grant. The road was finally completed in 1887 to the California line.

From that time on patents were issued to the Oregon & California Railroad Co., successor to the Oregon Central Railroad Cos., under the act of July 25, 1866, as amended by the act of April 10, 1869. About 1895 large quantities of land in both grants were patented to the Oregon & California Railroad Co.

For a long time after the passage of the acts of 1869 hereinbefore referred to the railroad sold the lands at \$2.50 an acre, and sales were substantially made with-

in the provisions of the act of 1869. About 1892 or 1893 the railroad company adopted the policy of disposing of the lands in large areas. In 1901 the so-called Harriman interests obtained control, and in January, 1903, the policy was adopted of reserving from sale the remaining lands. From the center of Oregon to the eastern boundary line of the State the railroad owned nearly one-half of the land within 30 or 40 miles of the railroad. In February, 1907, the Legislature of Oregon memorialized Congress, protesting against these violations of the grant by the railroad company, and the resolution of 1908, under which the suits were instituted, was passed.

The West Side grant involving approximately 128,000 acres, and the East Side grant, embracing about 3,200,000, both passed into the ownership of the Oregon & California Railroad Co., a subsidiary corporation to the Southern Pacific. From these two grants approximately 820,000 acres were sold prior to the withdrawal of the lands by the railroad company from sale on January 1, 1903. Of this 820,000 acres, 296,000 acres were sold to 4,930 purchasers in quantities not exceeding 160 acres to a single purchaser; 524,000 acres were sold to 376 purchasers in quantities exceeding a quarter section to the purchaser; of the 524,000 acres that were sold in quantities not exceeding 160 acres to the purchaser, 400,000 acres were in quantities exceeding 1,000 acres to the purchaser.

The Government in patenting the lands to the rail-

road company did not place any limitations or conditions in the patents. The first act, to wit, that of July 25, 1866, did not limit sales to actual settlers in areas of 160 acres. That provision was contained in the act of April, 1869. Some of the lands were patented under the former act alone, while other patents were issued under both acts. The most of them as appears from the statement of the Assistant Attorney General refer only to the act of July 25, 1866, which did not contain the restrictions. Titles from the railroad company to this land acquired by said company through patents from the Government were examined and approved without question by the leading lawyers of Oregon. The Department of the Interior examined the abstracts and approved the titles in exchanges with the Oregon & California Railroad Co., receiving back said lands and giving fee to lands in other parts of the country—that is, the Interior Department to the extent of 50,000 acres of land approved the title of purchasers.

No question seems to have arisen concerning the validity of these titles either in Oregon or with the Government until quite recently. Much of the lands sold by the Government have been acquired by timber operators who have made considerable investments. The evidence also shows that the greater portion of the land is situated on steep hillsides, is rocky, and not susceptible of cultivation. It is chiefly valuable for timber. The industrial activity of a considerable portion of Oregon is grounded on these titles. It is of importance to the whole public that some adjustment be made as to the

title to the lands which have been sold by the railroad company. Passing over any legal question as to the right of the Government to forfeit lands which have been sold by the railroad under the conditions hereinbefore set forth, it is manifest that these purchasers have equities which ought not to be disregarded.

It is the purpose of this legislation to recognize these equities. The legislation is, in actual effect, rather in the nature of a confirmation of titles. The suggestion made by the Interior Department that compromises be effected only upon the joint action of the Department of Justice and the Interior Department was for the purpose of investigating each case and recognizing the varying equities of the purchasers. This course would require the employment of a numerous field force of special agents, would prolong the controversy, and probably result in failure to settle in many instances.

The committee, after carefully considering the whole subject, and this feature of it in detail, have reached the conclusion that the best course to pursue is that originally suggested by the Department of Justice, namely, treat all purchasers alike and settle with all of them on a uniform basis. Any other course would be no material improvement on proceeding through the courts to a final determination of the litigation.

A brief and partial analysis of the paragraphs is now presented.

Paragraph 1 is designed to confirm and give congressional sanction to the proceedings of forfeiture here-

tofore instituted and now pending under the resolution of 1908. The desirability of this provision is manifest when it is stated that objections have been made by the defendants to the form and procedure adopted by the Government.

Section 2 provides that the lands when recovered shall not become subject to entry under the public land laws until further legislation is had. Your committee, after carefully considering the matter, decided that until the lands have been recovered and it has been ascertained just what lands are for disposition under the public-land laws, it will prevent confusion and many conflicts from arising to deal with that feature of the subject separately. Moreover, it is also necessary in order to enable the Government to carry out the compromise features with the purchasers.

Section 3 limits to one year the period in which other suits may be brought. The Department of Justice in the beginning doubted the advisability of suing any purchaser from the railroad company. It may not institute other suits than those now pending. However, the committee recognizes the fact that circumstances may hereafter come to light which would make desirable the institution of new suits, and it is not thought best to now forbid that.

Section 4 is the most important provision in the bill. It deals with the method and terms of compromise to be made by the Government with purchasers from the railroad company.

Decrees based on stipulations are to be entered adjudging that the lands are forfeited to the United States. The defendants are to be permitted to purchase the lands claimed by them at \$2.50 per acre. This is to operate as a compromise of all claims of the United States for waste or trespass. This provision applies only to lands patented to the railroad company and sold by it. It does not apply to lands that have not been patented or to lands that the railroads still claims.

Section 5 makes clear that section 4 as to compromise does not apply to the main suit against the Oregon & California Railroad Co. et al.

Section 6 merely seeks to preserve the right of forfeiture by declaring that nothing in this act shall be taken as a condonation or waiver of any condition in the grants or right of the United States to forfeiture.

The bill on the whole is designed to guard and strengthen the rights of the Government as against the railroad company, which in the opinion of the committee can present no equities or claims to equitable consideration. It also recognizes the equities of purchasers from the railroad company and seeks to provide a fair and speedy adjustment of them. Taking into consideration the terms of the original grants, the failure to place the conditions of the act of 1869 in the patents, the acquiescence by the Government in the sales and the acceptance by it of titles from the railroad; having regard also to the character of the lands, which render the greater portion of them unfit for cultivation; and

considering local conditions in Oregon, as well as the rights and interests of the Government, it is believed that this legislation presents the fairest solution of the controversy that can be devised.

DEPARTMENT OF JUSTICE,

OFFICE OF THE ATTORNEY GENERAL,

Washington, D. C., March 22, 1912.

Hon. Joseph T. Robinson,

Chairman Committee on the Public Lands, House of Representatives.

Sir: Your letter of March 16, inclosing copy of H. R. 22002, requesting report upon the subject matter of the proposed legislation, together with such suggestions and recommendations as I may desire to make, has been received.

This bill relates to the litigation involving the land grants of the Oregon & California Railroad Co. under the act of Congress approved July 25, 1866, (as amended), and act of Congress approved May 4, 1870. The bill involves three propositions, viz:

(1) The disposition of lands reverting to the United States by reason of claims of forfeiture asserted pursuant to the joint resolution of Congress approved April 30, 1908.

(2) A limitation of the time within which further suits may be instituted involving lands that have been

sold by the Oregon & California Railroad Co.

(3) Authority for the Attorney General to compromise the suits heretofore instituted involving lands sold by the Oregon & California Railroad Co.

The provisions relating to the disposition of the lands reverting to the United States by reason of claims of forfeiture asserted as aforesaid involve no questions of law, but relate strictly to questions of legislative policy. As to this phase of the proposed legislation, I assume that no recommendation is desired from the Department of Justice.

In my judgment the provisions of the bill limiting the time within which further suits may be instituted against purchasers of these railroad lands, and vesting the Attorney General with authority to compromise suits instituted against the purchasers of these lands, are not only unobjectionable, but desirable; and I respectfully recommend that they be enacted into law.

If you desire, the attorney in charge of this litigation will appear before your committee and explain in detail the grounds upon which my recommendations are based. Respectfully,

GEO. W. WICKERSHAM, *Attorney General*

DEPARTMENT OF THE INTERIOR.

Washington, May 24, 1912.

Hon. Reed Smoot,

Chairman Committee on Public Lands, United States Senate.

Sir: I am in receipt, through reference from your committee, for information as to the law and the facts in relation thereto and such suggestions as I may see fit to offer, of Senate Bill No. 5885, being a bill supplementing the joint resolution of Congress approved April 30, 1908, entitled "Joint resolution instructing the Attorney General to institute certain suits, etc."

This bill has been the subject of repeated conferences between this department and the Attorney General, which has been the cause of delay in making report thereon, and as a result of such conferences I have no objection to offer to the provisions of the bill excepting those authorizing a compromise, which are found in section 6 of the proposed bill. Respecting this section, I have to recommend that it be amended so as to read as follows:

"Sec. 6. That the Attorney General is hereby authorized, with the written assent of the Secretary of the Interior, to compromise by written stipulation with one or more of the defendants in any suit or suits heretofore or hereafter instituted pursuant to the provisions of said joint resolution approved April thirtieth, nineteen hundred and eight, involving lands sold and con-

veyed, or agreed to be sold and conveyed, by said Oregon and California Railroad Company prior to September fourth, nineteen hundred and eight, upon such terms as may appear to be just and equitable, taking into consideration in adjusting such terms all the facts and circumstances respecting the purchase of said lands and the use, occupation, and improvement thereof. Such stipulation may provide that a decree shall be entered in said suit adjudging that the lands involved therein have been and are forfeited to the United States, and that such lands or any part thereof, or any right or interest therein or in any part thereof, may, after the entry of such decree of forfeiture, be repurchased from the United States by such defendant or defendants upon the terms and conditions agreed upon in such stipulation.

“If the defendant or defendants designated in said stipulation, his or their successors or assigns, shall within three months from the entry of said decree file with the Secretary of the Interior a certified copy thereof and duly comply with the terms and conditions of the stipulation aforesaid, the Secretary of the Interior shall forthwith cause a patent or patents to be issued conveying all of the right, title, and interest of the United States in and to such land or such part thereof or such right or interest therein as may be repurchased from the United States under such stipulation, and such patent or patents shall be in all respects in accordance with the terms of such stipulation.

“*Provided, however,* That the provisions of this sec-

tion shall not apply to any lands that have not been heretofore patented to said Oregon and California Railroad Company.”

Very respectfully

SAMUEL ADAMS,
First Assistant Secretary.

UNION CALENDAR NO. 330.

62d CONGRESS, 2d SESSION.

H. R. 22002

[Report No. 1008.]

IN THE HOUSE OF REPRESENTATIVES.

March 15, 1912.

Mr. Lafferty introduced the following bill; which was referred to the Committee on the Public Lands and ordered printed.

July 16, 1912.

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed.

[Strike out all after the enacting clause and insert the part printed in italic.]

A BILL

Supplementing the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled “Joint resolution instructing the Attorney

General to institute certain suits," and so forth.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[That all claims of forfeiture heretofore or here-]
[after asserted by the Attorney General on behalf of]
[the United States in or by any and all suits in equity,]
[actions at law, or other judicial proceedings institut-]
[ed pursuant to the joint resolution of Congress ap-]
[proved April thirtieth, nineteen hundred and eight,]
[entitled "Joint resolution instructing the Attorney]
[General to institute certain suits," and so forth, be,]
[and the same are hereby, ratified and confirmed and]
[are hereby declared to be of the same force and ef-]
[fect as declarations of forfeiture by the Congress of]
[the United States.]

[Sec. 2. That none of the lands reverting to the]
[United States by virtue of any right of forfeiture]
[thereto as aforesaid shall be or become subject to en-]
[try under any of the public-land laws of the United]
[States, or to the initiation of any right whatever under]
[any of the public-land laws of the United States ex-]
[cept as hereinafter provided.]

[Sec. 3. That none of the lands reverting to the]
[United States as aforesaid shall be or become subject]
[to State selection, railroad indemnity or lieu se-]
[lection, forest lieu selection, or any other kind of lieu]
[selection or exchange, or to Sioux half-breed scrip,]

[Wyandotte scrip, Porterfield scrip, Valentine scrip,]
[soldiers' additional homestead entry, or any other kind]
[of scrip, the intention hereof being to prohibit the dis-]
[position of any of said lands under any limited or spe-]
[cial right of selection, location, or entry, except as pro-]
[vided by section six of this act.]

[Sec. 4. That after, but not before, any judgment]
[or decree sustaining any right of forfeiture asserted]
[as aforesaid shall become final, with no right of appeal]
[therefrom, all of the lands so adjudged to have revert-]
[ed to the United States shall be disposed of under the]
[general public-land laws of the United States, and]
[shall be opened to settlement, location, and entry by]
[proclamation of the President under the drawing sys-]
[tem, which proclamation shall prescribe the manner]
[in which the lands may be settled upon, located, and]
[entered by persons entitled to make entry thereof]
[under the public-land laws of the United States; and]
[no persons who shall attempt to initiate any right to]
[enter on said lands prior to the time designated, or]
[otherwise in violation of any of the provisions of said]
[proclamation, shall be qualified to initiate, exercise,]
[or enjoy any rights whatever as to any of said lands]
[under the public-land laws of the United States; the]
[purpose hereof being that all such lands shall be]
[opened to entry at such a time and in such a manner]
[that all persons entitled to make entry thereof shall]
[have equal opportunity therefor: *Provided, That*]
[the provisions of this section shall not apply to any]

[lands that shall be disposed of under the provisions]
[of section six of this Act: *And provided further, That*]
[all lands within the exterior boundaries of any national]
[forest which shall revert to the United States as afore-]
[said shall become national forest lands, and shall be]
[disposed of only under the public-land laws appli-]
[cable to forest lands.]

[Sec. 5. That no suits in equity, actions at law,]
[or other judicial proceedings shall be instituted to]
[said joint resolution approved April thirtieth, nine-]
[teen hundred and eight, that shall involve any lands]
[sold by the Oregon and California Railroad Com-]
[pany prior to April thirtieth, nineteen hundred and]
[eight, unless the same shall be instituted within one]
[year from the date of the approval of this Act: *Pro-*]
[vided, That this section shall not be construed to ap-]
[ply to any suits in equity heretofore instituted, nor]
[to any of the parties thereto, nor to any of the lands]
[involved therein, nor to the institution of any further]
[suits in equity, actions at law, or other judicial pro-]
[ceedings relating to any of the lands that are involved]
[in said pending suits.]

[Sec. 6. That the Attorney General is hereby]
[authorized to compromise, in the manner hereinafter]
[provided, any suit heretofore or hereafter instituted]
[pursuant to the provisions of said joint resolution ap-]
[proved April thirtieth, nineteen hundred and eight,]
[involving lands purchased from the Oregon and Cali-]
[fornia Railroad Company. In any such suit the At-]

[torney General may, in his discretion, stipulate with]
[the defendant or defendants who purchased said lands,]
[or are the successors or assigns of such purchaser or]
[purchasers, that decree shall be entered adjudging]
[that the lands involved therein have been and are for-]
[feited to the United States; such decree shall recite]
[that the same was entered pursuant to such stipula-]
[tion. If said purchaser defendant or defendants, or]
[their successors or assigns, shall within six months]
[from the entry of said decree file with the Secretary]
[of the Interior a certified copy of said decree, togeth--]
[er with an application to purchase all of the lands ad-]
[judged by said decree to have been forfeited to the]
[United States as aforesaid, and shall pay to the]
[Treasurer of the United States the sum of two dollars]
[and fifty cents per acre for all of the lands so applied]
[for, the Secretary of the Interior shall cause patents]
[to be issued conveying to said purchaser defendant or]
[defendants, and their successors and assigns, all of the]
[right, title, and interest of the United States in and]
[to all of said lands; and such purchase shall operate]
[as a compromise of any and all claims of the United]
[States for waste or trespass upon any of said lands]
[committed by such purchaser defendants, or their suc-]
[cessors or assigns, respectively: *Provided*, That the]
[benefits of this section shall not be exercised or enjoy-]
[ed except in cases where decree shall be entered pursu-]
[ant to stipulation entered into as aforesaid: *And pro-*]
[vided further, That the provisions of this section shall]
[not apply to any lands that have not been patented to]

[said Oregon and California Railroad Company; *And*] [further provided, That the aforesaid privilege of purchasing said forfeited lands shall not be exercised or] [enjoyed as to less than all of the lands involved in] [said suits, respectively; the purpose hereof being to] [prevent the elimination from any such purchase of] [any lands from which timber has been removed or] [upon which any other waste or trespass has been committed.]

[Sec. 7. That the provisions of section six of this] [Act shall not be construed to apply to the suit, involving approximately two million three hundred and] [sixty thousand acres, now pending in the District] [Court of the United States for the District of Oregon, wherein the United States of America is complainant and the Oregon and California Railroad Company, Southern Pacific Company, Stephen T.] [Gage, Union Trust Company, and others are defendants, being designated in the records and files of said] [court as suit numbered thirty-three hundred and forty;] [nor shall the provisions of said section six of this Act] [be construed to apply to any of the lands involved in] [said last described suit, nor to create any rights or privileges whatever in favor of any of the defendants therein.]

[Sec. 8. That nothing in this Act contained, nor] [action taken pursuant to the provisions of this Act,] [shall be construed as a condonation of any of the] [breaches of any of the conditions or provisions an-]

[nexed to any of the grants designated in said joint]
[resolution approved April thirtieth, nineteen hundred]
[and eight, nor as a waiver of any of said conditions]
[or provisions, nor as a waiver of any right of forfeiture]
[in favor of the United States on account of any breach]
[or breaches of any of said conditions, nor as a waiver]
[of any cause of action or remedy of the United States]
[on account of any breach or breaches of any of said]
[conditions or provisions, nor as a waiver of any other]
[rights or remedies existing in favor of the United]
[States.]

That all claims of forfeiture heretofore or hereafter asserted by the Attorney General on behalf of the United States in or by any and all suits in equity, actions at law, or other judicial proceedings instituted pursuant to the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled "Joint resolution instructing the Attorney General to institute certain suits," and so forth, be, and the same are hereby, ratified and confirmed and are hereby declared to be of the same force and effect as declarations of forfeiture by the Congress of the United States.

Sec. 2. That none of the lands reverting to the United States by virtue of any right of forfeiture thereto as aforesaid shall be or become subject to entry under any of the public-land laws of the United States, or to the initiation of any right whatever under any of the public-land laws of the United States.

Sec. 3. That no suits in equity, actions at law, or

other judicial proceedings shall be instituted pursuant to said joint resolution approved April thirtieth, nineteen hundred and eight, that shall involve any lands sold by the Oregon and California Railroad Company prior to April thirtieth, nineteen hundred and eight, unless the same shall be instituted within one year from the date of the approval of this Act: **Provided, That this section shall not be construed to apply to any suits in equity heretofore instituted, nor to any parties thereto, nor to any of the lands involved therein, nor to the institution of any further suits in equity, actions at law, or other judicial proceedings relating to any of the lands that are involved in said pending suits.**

Sec. 4. That the Attorney General is hereby authorized to compromise in the manner hereinafter provided any suit heretofore or hereafter instituted pursuant to the provision of said joint resolution approved April thirtieth, nineteen hundred and eight, involving lands purchased from the said Oregon and California Railroad Company prior to September fourth, nineteen hundred and eight. In any such suit the Attorney General may, in his discretion, stipulate with the defendant or defendants who purchased said lands, or are the successors or assigns of such purchaser or purchasers, what decree shall be entered adjudging that the lands involved therein have been and are forfeited to the United States. Such decree shall recite that the same was entered pursuant to such stipulation. If said purchaser defendant or defendants, or their successors or assigns, shall within six months from the entry of said decree file

with the Secretary of the Interior a certified copy of said decree, together with an application to purchase all of the lands adjudged by said decree to have been forfeited to the United States as aforesaid, and shall pay to the Treasurer of the United States the sum of two dollars and fifty cents per acre for all of the lands so applied for, the Secretary of the Interior shall cause patents to be issued conveying to said purchaser defendant or defendants, and their successors and assigns,, all of the right, title, and interest of the United States in and to all of said lands; and such purchase shall operate as a compromise of any and all claims of the United States for waste or trespass upon any of said lands committed by such purchaser defendant or defendants, or their successors or assigns, respectively; Provided, That the benefits of this section shall not be exercised or enjoyed except in cases where decree shall have been entered pursuant to stipulation entered into as aforesaid: And provided further, That the provisions of this section shall not apply to any lands that have not been patented to said Oregon and California Railroad Company: And provided further, That the aforesaid privilege of purchasing said forfeited lands shall not be exercised or enjoyed as to less than all of the lands involved in said suits, respectively, the purpose hereof being to prevent the elimination from any purchase of any lands from which timber has been removed or upon which any other waste or trespass has been committed, or the elimination of any part whatever of any land from such purchase.

Sec. 5. That the provisions of section four of this Act shall not be construed to apply to the suit involving approximately two million three hundred and sixty thousand acres, now pending in the District Court of the United States for the District of Oregon, wherein the United States of America is complainant and the Oregon and California Railroad Company, the Southern Pacific Company, Stephen T. Gage, the Union Trust Company, and others are defendants, being designated in the records and files of said court as suit numbered thirty-three hundred and forty; nor shall the provisions of said section four of this Act be construed to apply to any of the lands involved in said last described suit; nor to create any rights or privileges whatever in favor of any of the defendants therein.

Sec. 6. That nothing in this Act contained, nor action taken pursuant to the provisions of this Act, shall be construed as a condonation of any of the breaches of any of the conditions or provisions annexed to any of the grants designated in said joint resolution approved April thirtieth, nineteen hundred and eight, nor as a waiver of any of said conditions or provisions, nor as a waiver of any right of forfeiture in favor of the United States on account of any breach or breaches of any of said conditions, nor as a waiver of any cause of action or remedy of the United States on account of any breach or breaches of any of said conditions or provisions, nor as a waiver of any other right or remedies existing in favor of the United States.

Note: Lines in brackets are in Original Bill. Lines in italics are amendments recommended by Committee.

DEFENDANTS' EXHIBIT 335

purposes to be a map issued by Department of the Interior, General Land Office, Fred Dennett, Commissioner, State of Oregon, compiled from the official records of the General Land Office and other sources, under the direction of I. P. Berthong, Chief Drafting Division, 1910, and showing thereon in accordance with legend as marked in different colors: U. S. Surveyor General's office, U. S. Land offices, Indian Reservations, Military Reservations, National Forests, National Park, National Monuments and Bird Reserves, County Boundaries and Land District Boundaries; and showing also Military Roads, Light Houses, and Townships not subdivided by special designation.

This map is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 336

is Department Circular No. 62, of date of October 29, 1907, issued by the Treasury Department, subject "Transportation of Government Employees and Property."

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANT'S EXHIBIT 337

is Circular No. 16, Quartermaster General's Office,

1912, entitled: "Schedule of Land-grant and Bon-aided Railroads of the United States, and instructions concerning settlement of accounts over such roads, with a compendium of United States laws showing the conditions of the grants and subsidies, issued July 1, 1912, Washington, Government Printing Office, 1912." At page 42 of this circular appears the following:

58.—SOUTHERN PACIFIC COMPANY.

From Roseville Junction, Cal., to East Portland Oreg.

July 25, 1866 14 239 And be it further enacted, That

June 25,,1868 15 80 the grants aforesaid are made

Apr. 10, 1869 16 47 upon the condition that the

said companies shall keep said railroad and telegraph in repair and use, and shall at all times transport the mails upon said railroad, and transmit dispatches by said telegraph line for the Government of the United States, when required so to do by any department thereof, and that the government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the

rates paid by private parties for the same kind of service. And said railroad shall be and remain a public highway for the use of the Government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the Government of the United States. —Act of July 25, 1866, Section 5.

This exhibit has also therewith a map of Land-grant and Bond-aided railroads of the United States, 1912.

Bond-aided Roads shown by heavy black lines.

Fifty per cent Land Grant Roads shown by red lines.

Free Land Grant Roads shown by green lines.

Connections shown by light black lines.

Prepared under direction of Quartermaster General, U. S. A. This map shows a Free Land Grant

road between East Portland, now City of Portland, Oregon, and Roseville Junction, in California.

This exhibit is not printed other than as above, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 338

consists of a set of forms furnished by the Quartermaster Department as Government requests for transportation, with conditions and instructions of Bills of Lading, and conditions and instructions as to use of other forms.

This exhibit is not printed but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 339

purports to be a standard map of the Oregon & California Railroad Company in the state of Oregon, and purports to show, according to the legend, in colors, the following:

| | |
|------------------------------------|--|
| In red squares | Vacant government land |
| In red rectangle with black circle | Lands included in Forest Reserve withdrawn from entry |
| In red rectangle with red circle | Lands included in Power-site Reserves withdrawn from entry |

| | |
|---|--|
| In red rectangle with smaller red circle | Lands included in Fish- eries Bureau with- drawn from entry. |
|---|--|

| | |
|--|---|
| In red square with small black circle | Lands included in Indian Reservation withdrawn from entry |
|--|---|

and all shown in their relations to the lands within the limits of the grants, place and indemnity.

This map is not printed, but certified up under order of Court and stipulation of parties,

DEFENDANTS' EXHIBIT 340

Estimated Acreage of Public Lands in the Portland and Roseburg, Oregon, Land Districts.

| County | Acres |
|------------------|-----------|
| Multnomah | 8,000 |
| Washington | 280 |
| Tillamook | 8,940 |
| Yamhill | 7,460 |
| Polk | 7,280 |
| Clackamas | 72,760 |
| Marion | 840 |
| Lincoln | 2,560 |
| Benton | 6,560 |
| Linn | 9,120 |
| Lane | 133,040 |
| Coos | 37,920 |
| Curry | 57,560 |
| Douglas | 197,840 |
| Josephine | 257,160 |
| Jackson | 189,640 |
| Klamath | 16,000 |
| <hr/> | |
| Total | 1,012,960 |

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 341

purports to be a summary showing stockholders, directors and officers of the Oregon and California Railroad Company, as shown by the record books of the Company from October 11, 1870, down to and including April 11, 1911.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 342

is the standard map of the Oregon & California Railroad Company of the state of Oregon, purporting to show, in colors, lands examined, cruised, and reported upon by the followings persons. S. C. Bruce, S. A. Carmichael, C. A. Cavell, F. J. Cronin, F. A. Elliott, M. F. McCown, John McDonald, D. C. McLennan, L. D. McLeod, Ben Peck, Wm. Penoyar, and A. W. Rees; and purports to show the location of these lands thus examined, cruised and reported upon, within the limits of these grants.

This map is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 343

is a detailed statement purporting to show lands cruised by S. C. Bruce, as classified, present condition as to timber grazing and agriculture, and when denuded—

as to grazing and agriculture.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 344

is a statement purporting to show lands cruised by L. D. McLeod, as classified, present condition as to timber, grazing and agriculture, and when denuded—as to grazing and agriculture.

This exhibit is not printed but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 345

is an illustrated article purported to have been written by Henry S. Graves, Chief of the Forest Service, appearing in the Saturday Evening Post, issue of August 17, 1912, entitled “‘Farms’ In the National Forests” and reprinted in the Congressional Record on August 16, 1912, under the subject of “‘Farms’ In the National Forests,” “Extension of Remarks of Honorable William Kent of California In the House of Representatives,” and is as follows, as printed in the Congressional Record:

FARMS IN THE NATIONAL FORESTS.

Extension of Remarks of Hon. William Kent, of California, In the House of Representatives, Thursday, August 15, 1912.

Mr. KENT said:

MR. SPEAKER Under the leave granted to me, I include an article printed in the Saturday Evening Post, by Henry S. Graves, Chief of the Forest Service.

The article is as follows:

FARMS IN THE NATIONAL FORESTS.

(By Henry S. Graves, Chief of the Forest Service.)

The statement has been repeatedly made that the national forest policy retards development. The establishment of the national forests is persistently asserted to have resulted in the withdrawal of vast quantities of agricultural land from settlement. Certain Members of Congress and hostile newspapers have repeatedly charged the Forest Service with locking up thousands of undeveloped farms in the national forests, and by its bureaucratic methods depriving settlers of the rights to which they are entitled by law. Statements on this subject which entirely misrepresent actual conditions have been made so often and so insistently that, although refuted over and over again, many persons unfamiliar with local conditions have come to believe them.

From its inception the national-forest policy has been vigorously opposed by certain interests in the country. The opposition first attempted to break down the whole system and abolish the national forests. This effort has failed because the people at large are convinced that the national forests must be retained, and much less of direct attack upon the national forests is heard now than

formerly. The opposition attempts to accomplish the same ends by less direct methods.

The attack on the Forest Service in its execution of the forest homestead law is part of this campaign against the whole national-forest system. Many critics of the Forest Service have been misled in regard to the agricultural resources within the national forests and the present methods of putting them to use. They unwittingly lend their support to a movement which, if successful, will begin the disintegration of the national forests and seriously set back the entire conservation policy.

Misleading information persistently circulated regarding the agricultural lands within the national forests resulted last June in the passage by the Senate of a rider to the appropriation bill for the Department of Agriculture, which could not fail to result in turning over public property worth millions of dollars to private exploitation. Although proclaimed in the interest of agricultural settlement, this amendment would block rather than promote the actual use of agricultural resources. It plays directly into the hands of large interests which are always working to secure public property for private exploitation.

This amendment, called the Nelson amendment, was passed by the Senate, but at the present writing has not passed the House. It required the opening to settlement and entry of all lands fit and suitable for agriculture within national forests, irrespective of their value for other purposes or of the need for their retention for

public use. Existing legislation permits but does not require the Secretary of Agriculture to open agricultural lands within national forests for settlement; in other words, it leaves him discretion to hold the land when the protection of the public interest, in his judgment, requires such a course.

The purpose of this article is to place before the public the facts regarding the agricultural resources within the national forests, to show how agricultural lands are now being made available for the settler, and to indicate the results of legislation such as was incorporated in the agricultural bill by the Senate.

The national forests are situated in the mountains. They embrace the bulk of the forest-bearing lands still in Government ownership in the Rocky Mountains, the Cascade Mountains, the Sierra Nevada Mountains of California, and a part of the ranges adjoining the Pacific coast. East of the Rocky Mountains there are national forests only in isolated mountainous areas, like the Black Hills, of South Dakota; the Bigs Horns, of Wyoming; the Wichita Mountains, of Oklahoma; the Ozarks, of Arkansas; and the sand hills of Nebraska and Kansas, with the exception of small forests in Minnesota, Michigan, and Florida.

For the most part the topography of the national forests is very rugged. Their soil and climate in the main are unsuited to agriculture. In drawing the boundaries of the forests all compact bodies of agricultural

land of any extent have been excluded. In every mountain region, however, limited areas here and there along the bottoms of valleys, on benches, and at the confluence of streams are susceptible of cultivation. The forests include several valleys from one-fourth to one-half mile wide and 20 to 40 miles long, covered with dense virgin timber, where a considerable number of farms can be successfully developed after the forest is cut.

THE TRUTH ABOUT OUR TIMBER LANDS.

Under the present laws, as executed by the Forest Service, these lands are passing into the hands of bona fide settlers as rapidly as the timber is removed. Their area has been enormously exaggerated, because of the pressure of speculators to get timber for nothing under the homestead laws. The arable lands on these few river bottoms will not cover over one-half of 1 per cent of the entire national forest area. The rest of the agricultural land is in scattered parcels, in narrow strips along streams or benches, small patches where two streams unite, or semiarid mesas in the southwest.

Much land lying within the national-forest boundaries is in private ownership, having been acquired before the forests were created. Naturally the most valuable lands were the first to be taken up. The result is that one may travel for hours within a national forest, seeing land that is largely capable of agricultural development but that has not been so developed; and the impression is formed that the land is part of the na-

tional forest. Where critics of the Forest Service have designated particular tracts, investigation has often proved that the criticism concerned land already in private ownership. The supposition that such land is a part of the national forest is natural when it is found covered with heavy timber and without evidences of cultivation. Such land is not cleared because the owners are holding it for the future value of its timber.

Not over 4 per cent of the actual forest area has the combination of topography, climate, and soil that would permit the land to be tilled successfully. Fully one-fourth of this amount can not be cultivated without irrigation. At least half of it is now covered with heavy timber and has a much greater value for its timber than for farming. Over one-fourth is now available for settlement and is opened to the homesteader upon application.

These facts are not appreciated by the general public. Statements are made by some newspapers and Members of Congress that great stretches of the national forests are agricultural. The national forests have been likened to lands in Ohio or Indiana when those States were a virgin wilderness. The belief has been spread abroad that, if opened to entry, these areas would be developed in small tracts, the timber removed, and the land put at once under profitable cultivation. It is asserted that single States, like Colorado or Idaho, have been deprived of the settlement of millions of acres of valuable farms. Such statements are not in accordance with

the facts. In comparison with Eastern conditions, the national forests typically resemble the most rugged portions of the White Mountains or Southern Appalachians.

Equally misleading statements have been spread abroad about the policy of the Forest Service. It has been reiterated that the Government declines to release, under the forest homestead law, lands that are chiefly valuable for agriculture; and again, that the narrow and burdensome restrictions read into the law by the Forest Service so hinder and discourage settlement as to make the statute of no effect. It is doubtless through such misrepresentation that the recent Democratic platform refers to the alleged annulment of the will of Congress as to agricultural lands in national forests by administrative regulation. It is unbelievable that those who drew this plank knew either the actual conditions in the national forests or the real facts about what the Government is doing to make the limited agricultural resources of these forests available for use. They certainly could not have realized the consequences of a general throwing open to entry of all lands in the forests having arable soil, regardless of their value for other purposes.

When the national forests were established there was no law permitting the homesteader to obtain lands within them. In 1906 the so-called forest-homestead law was passed, upon the recommendation of the Forest Service. Under this act lands deemed by the Secretary

of Agriculture to be valuable chiefly for agriculture and not needed for public uses are opened to entry. Under this law the Forest Service has consistently encouraged settlement on lands chiefly valuable for growing farm crops. Since 1906 approximately 1,400,000 acres have been opened to entry in accordance with its terms for the benefit of upward of 12,000 settlers.

THE FIRST PRINCIPLES OF FOREST SERVICE.

The Forest Service desires bona fide settlement in the national forests. One of the fundamental principles of the national forest policy is to promote the best use of every kind of land. Settlement not only puts land of greater value for agriculture than for timber or other purposes to its highest use, but also, by bringing settlers into the mountains, makes forest administration and protection easier. The Forest Service needs the help of settlers in fire protection. It is obtaining their assistance in many localities through cooperative arrangements, and is enlisting their services largely as members of the regular protective and administrative force and in the construction of trails and other improvements. Every home builder in a national forest is an immediate asset in its present administration and future development.

Recognizing these facts, the service encourages settlement under the forest homestead act of all lands that are properly classifiable as agricultural and likely to be taken by bona fide home makers. On the other hand, it has consistently resisted efforts to throw large areas of heavily timbered land out of the national forests on

the ground of alleged agricultural value, when it was certain that agricultural development would not be apt to follow.

Frequent efforts have been made to secure such eliminations by presidential proclamation or by act of Congress. The rider recently adopted by the Senate is the result of a determined effort to require the opening to entry of all lands within the national forests which have any agricultural possibilities, regardless of their value for standing timber, water power, or other purposes besides farming, and regardless of the need of portions of such lands for public uses.

In short, though the Forest Service has done its utmost to encourage home building on lands chiefly valuable for agriculture, it has declined to open to entry under the guise of settlement lands that are worth far more for timber or water power than for any possible agricultural use, and that are not wanted for homes at all.

The Forest Service has been subjected to the greatest pressure to throw open the considerable areas that are now covered with valuable timber and will be suitable for agricultural use when cleared of forest. There has also been strong influence brought to bear to separate from the forests timberlands whose topography, soil, and climate absolutely preclude any agriculture. The timberlands now in private ownership in national-forest regions have been obtained from the Government under various public-land laws for nothing or at a very small

price. Large timber holdings have been built up very cheaply, because entrymen were glad to sell their patents for much less than the real value of the timber. Many of the largest owners thus secured their timber for a few cents a thousand feet. Today it is worth from \$2 to \$5. The establishment of the national forests stopped these speculative profits. Government timber can now be obtained only by paying its actual market value. It is but natural that the effort to secure these resources under the old terms, at a mere fraction of their worth, should be renewed.

THE WASHINGTON PETITION.

The Forest Service is constantly receiving applications for heavily timbered lands under the forest homestead act. The present value of the timber on such areas far exceeds the value of the land for agriculture after the trees are cut. The purpose of most of these applications is to secure the timber for speculation. In many cases applications have been received for timberlands on mountain slopes where there never will and never can be any farming. Petitions for the elimination of large blocks of land from the national forests, where not over 3 or 4 per cent of the area has any potential agricultural value, are common. A petition that had been adopted by the Legislature of the State of Washington was presented to the President, the Secretary of Agriculture, and Congress last winter, to eliminate over 100,000 acres from one national forest in Washington. The petition asserts that the land is chiefly valuable for agriculture

and does not contain heavy timber. As a matter of fact, the main crest of the Cascade Mountains, rising to a height of over 4,000 feet, runs through the middle of the area, which has growing on it not less than one and one-half billion feet of merchantable timber. Practically 90 per cent of the land has such high elevation that climate alone precludes agriculture. On account of adverse climate, rough topography, and unfit soil, not over 5 per cent of the whole tract can ever be farmed. Of this 5 per cent fully one-half is covered with timber running from forty to seventy-five thousand board feet per acre. A small portion may properly be classed as valuable for agriculture; and this is now being given to settlers under the forest homestead act as rapidly as they apply. The heavily timbered portions having arable soil will be cut over as soon as the timber can be disposed of and then opened to settlement.

Many of the areas that speculators are now seeking contain from 100,000 to 200,000 feet of timber to the acre. Single claims of 160 acres would have a value of from \$50,000 to \$75,000. In the Priest River Valley, in the Kaniksu Forest, Idaho, there are 25,000 acres of arable land, bearing from 60,000 to 125,000 feet of merchantable timber to the acre. Much of this timber is Idaho white pine, the most valuable forest tree of the Northwest. It is now purchased from the Government at prices ranging from \$4 to \$6 per 1,000 feet. An acre of timberland in this valley is worth from \$100 to \$500 for its stumpage. A single homestead of 160 acres would have on it timber worth on the stump from \$16,000 to

\$75,000. Unimproved, the value of the land for farming could not possibly exceed \$1,200. Repeated efforts have been made to secure the elimination of this area under the allegation that it is agricultural land. A considerable portion of the 25,000 acres will ultimately be cultivable, but the aim of those seeking it is not farming or home building, but a virtual gift of Government timber of great value.

The Swan River Valley in the Flathead National Forest, Mont., contains upward of 30,000 acres of arable land, bearing a virgin yellow pine forest of 15,000 to 40,000 board feet to the acre. Its value under present conditions is \$2.50 a thousand feet, averaging \$50 an acre. The timber on an average claim in this valley would be worth \$8,000.

The larger valleys of the Olympic National Forest, Wash., and in the national forests on the western slopes of the Cascade Mountains, contain in the aggregate several hundred thousand acres of arable land susceptible of tillage when cleared of its timber. Many of them bear stands ranging from 20,000 to 150,000 board feet to the acre, with individual acres running as high as 300,000 feet. The standing timber upon an average claim in such lands is worth from \$10,000 to \$50,000. If thrown open to entry under the general homestead laws, most of the lands of this character would be entered by timber speculators—not by bona fide homesteaders. This is shown conclusively by the character of the entries on similar lands prior to the creation of the national forests.

On the vast majority of the so-called homesteads located on heavily timbered lands there has been at best only a nominal and perfunctory compliance with the requirements of the homestead laws. Cultivation has been almost wholly lacking, and the improvements constructed indicate in their very nature the intention of the claimant to maintain but the most temporary sort of residence for the sole purpose of securing title to the standing timber. A careful analysis of the actual cultivation on all of the timbered homesteads located in the Kaniksu National Forest, Idaho, prior to its withdrawal from entry—a total of 95 claims—showed that only 1.34 per cent of the cultivable area on these entries had actually been farmed.

A similar analysis of 71 entries on the Clearwater National Forest, in the same State, showed that only 1.1 per cent of the arable land in these claims had ever been put to agricultural use. The general commutation of such entries, and their almost universal sale to lumber companies as soon as legal title can be conveyed, are further proof that they have not been entered in good faith for settlement and cultivation, but are sought for the speculative value of their timber. Wholly aside from the thousands of cases in the West—matters of court record—where such lands have been entered by employees or representatives of lumber companies in the interests of their employers, there are thousands of other cases where timber and land have been sold to corporations upon the first day when a legal title could be conveyed by

the claimant. Within the last two years white pine homesteads in the Coeur d'Alene National Forest, Idaho, entered before the forest was created, have been sold to timber corporations on the issuance of final certificate at prices ranging from \$10,000 to \$20,000 to the claim of 160 acres.

LANDS TURNED OVER TO TIMBER SPECULATORS.

It cannot be assumed that the heavily timbered lands that interested persons are now endeavoring to have thrown open to entry would be filed upon by a different class of claimants or would have any subsequent history other than speculative holding for their timber and final acquisition by large lumbering interests. The timber is far more valuable than before the creation of the national forests, and the competition among lumber companies to secure it is much more keen. Furthermore, every elimination of heavily timbered lands hitherto made from the national forests under local or political pressure has had the same history, namely: (1) Entry by timber speculators; (2) purchase by timber corporations.

In 1901, 705,000 acres of heavily timbered land were eliminated from the Olympic National Forest, Wash., because of the persistent claim made locally and in Congress that the land was chiefly valuable for agriculture. Ten years later not over 600 acres of the timbered portion of the 705,000 acres had been cultivated. Title to 523,720 acres has passed into the hands

of owners who are holding it purely for its timber value. Of this amount over 178,000 acres are in the hands of three companies and two individuals in holdings ranging from 15,000 to 81,000 acres. The following is a list of the principal owners of this land 10 years after its elimination:

| | Acres. |
|--|--------|
| Milwaukee Land Co. | 81,630 |
| James D. Lacey & Co | 48,370 |
| Edward Bradley | 16,360 |
| James W. Bradley | 16,360 |
| Weyerhauser Timber Co. | 15,560 |
| Henry & Larson Land Co. | 13,840 |
| Simpson Logging Co. | 12,360 |
| E. K. Wood Lumber Co. | 10,670 |
| Polson Logging Co. | 10,040 |
| George F. Stone | 8,920 |
| Ruddock & McCarthy | 7,810 |
| Olean Land Co. | 6,040 |
| Puget Mill & Timber Co. | 5,760 |
| W. H. White Co. | 5,280 |
| O'Neil Timber Co. | 5,200 |
| Edward and Susan Lowe | 5,040 |
| St. Paul, Minneapolis & Manitoba Railroad... | 4,760 |
| H. S. Upper | 4,360 |
| Merrill & Ring Co. | 4,160 |
| Union Lumber Co. | 4,120 |

| | |
|----------------------------------|---------|
| <i>vs. The United States</i> | 7325 |
| C. C. Bloomfield et al | 3,720 |
| Goodyear Land Co. | 3,640 |
| George M. Burr | 3,480 |
| C. H. Davis | 3,440 |
| C. E. Burrows & Co. | 2,780 |
| James Campbell | 2,760 |
| Mason County Logging Co. | 2,680 |
| V. H. May | 2,560 |
| James McNealy | 2,420 |
| Lincoln Timber Co. | 2,280 |
| Carsten & Earle | 2,240 |
| <hr/> | |
| Total | 318,640 |

The same result has followed eliminations from the Cabinet National Forest, Mont., in the valley of the Kootenai River, made under local pressure on the ground of agricultural value in 1906 and 1907. The Kootenai Valley, traversed by the main line of the Great Northern Railroad, is exceptionally accessible to the settler. Its soil and climate adapt its arable lands peculiarly to intensive and profitable agriculture and horticulture. An examination of these eliminations in 1909, however, showed that a very large percentage of the land opened to entry had been acquired by various concerns that were engaged in building up timber holdings for speculation.

Heavily timbered lands opened to entry under these conditions not only are taken up by speculators and acquired by timber corporations, but their use for agri-

cultural purposes is effectively blocked for an indefinite period. Such lands, consolidated in large holdings, are held by lumber companies for the future supply of their mills. No settlement is possible until the timber is cut, which may be 25 years hence, and then only by the payment of such prices as the owner may require. If retained in the national forests, subject to the forest homestead act, these lands might be secured without charge as rapidly as it was possible for the Forest Service to dispose of the timber.

LUMBER COMPANIES ON THE LOOKOUT.

The demand for agricultural land for bona fide settlement and cultivation has probably been more intense in the Kootenai Valley, Mont., within the last three years than in any other national forest. The condition that is blocking the agricultural development of this remarkably fertile district is not the presence of the national forest; it is the presence of enormous holdings in the hands of lumber companies and of the Northern Pacific Railroad. These heavily timbered holdings are being reserved indefinitely for a rise in the price of timber or for future lumbering operations, as the business policy of the owners may dictate. In the meantime the settlers can not secure an acre of them. On the other hand, all the lands in the national forest that are chiefly valuable for agriculture are being cut off and opened to entry just as rapidly as this can be done.

This condition, which is typical of many portions of

the Northwest, led the residents of the Kootenai Valley to petition, in 1909, that these lands be not eliminated from the national forest, as had been proposed previously, but that they be retained in the forest and opened to entry under the terms of the forest-homestead act. A similar position was taken by local residents and various commercial bodies in the vicinity of the Flathead and Blackfoot National Forests, Mont., who held "that the general opening to entry of the agricultural portions of those forests would retard the substantial, permanent development of that region by inviting locations for timber speculation rather than bona fide settlers."

It is probable that 2 per cent of the net acreage of the national forests is heavily timbered land of arable soil. The standing timber on this land averages at least 10,000 feet an acre, with an average value of not less than \$2 a thousand feet. The minimum value of these lands today for their timber may thus be roughly put at \$67,000,000. The opening of such areas to entry in their present condition would be nothing more or less than the grant of public timber worth \$67,000,000 to private corporations. Though made under the guise of homestead settlement, this action would be the most effective step the Government could take to retard the settling of these lands by people desiring homes and the actual use of the land for agriculture.

TOO BIG A BONUS.

It is repeatedly urged that the settler needs the money represented by the timber standing on his claim to

assist him in improving and developing the land. Even assuming that the individual homesteader rather than the lumber company would be the chief beneficiary of such a policy, it can not be justified as a basis for administering public property. The Government offers the settler an unimproved farm of 160 acres. The greater part of the lands entered under the forest homestead act are worth, as the settler gets them, from five to fifteen dollars an acre. Should the Government add to a farm worth from twelve hundred to three thousand dollars in its raw state a bonus of ten thousand or twenty thousand dollars' worth of timber to aid in its development? Such a bonus represents a gift of public property that is practically equivalent to hard cash taken from the Federal Treasury through loss of the receipts which the timber on such lands would otherwise yield. Twenty-five per cent of it is money that otherwise would be paid into the county school and road funds under the present law governing the disposition of revenues from the national forests.

Such a policy would carry the subsidizing of particular individuals and classes beyond the limits imposed by common sense and by proper regard for the interests of all the people who must pay these amounts out of the general funds. Furthermore, it is against the spirit and intent of our entire homestead legislation. The homestead laws are based upon the principle that the Government will furnish the raw land, while the citizen will furnish the labor required to make it productive. It is not intended that the homesteader shall receive an

endowed farm more valuable than the average farm in the Middle West today that represents the cumulative industry of two or three generations.

But—and this is the kernel of the whole question—the assumption that the timber patented to the entryman with the land will be used to develop it for agriculture is not true of the vast majority of claims. To accept it is blindly to ignore the one fact most convincingly established by the entire history of the public lands. Again, as in innumerable times in the past, the homesteader becomes under these conditions the man of straw set up by interests which seek public resources for speculation and monopoly. The forces that formerly sought to abolish the national forests outright now seek to break them up and parcel them out in the name of agricultural settlement.

The Forest Service constantly receives applications to enter lands that control valuable water powers. Such tracts are located on reservoir and dam sites at points required for the construction of power houses and on the routes of conduit lines. Some of these applications are made in good faith by persons ignorant of the value of the land for controlling the development of water power or irrigation. In the usual case, however, the value of the site is fully known to the entryman, who wants the land for speculation, not for agriculture.

The Forest Service provides for the use of national forest water-power resources by a system permits that allows development while retaining title to the Govern-

ment, but it has declined to release lands wanted for water-power use on the ground that they are of agricultural character. Such lands are not chiefly valuable for agriculture. In comparison with their commercial value for power development they have but insignificant value for farming. A statement was recently made to the Forest Service by one of the water-power companies in California that it would be glad to pay for certain lands required in developing its plant five times as much as they were worth to anybody else for any other purpose. When the power market justifies the development of these sites it is not unreasonable to anticipate that they will be worth not less than \$100 for each available horsepower. Many of the sites are within the national forests control from 1,000 to 5,000 horsepower, giving a single site a prospective value of from \$100,000 to \$500,000.

Though many of these tracts are unquestionably suitable for agriculture, their opening to settlement could have but one result, namely, speculative entries for their future value for the development of hydro-electric power. As soon as the legal title to such entries could be transferred they would be acquired by power companies. This has been done in the past in many parts of the West through homestead and pre-emption entries and mineral locations.

A homestead claim on a certain river in one of the national forests of Idaho, patented upon questionable compliance with the homestead laws, was sold to a power company immediately upon the issuance of final certifi-

cate. This is a typical instance of the efforts made by hydro-electric companies to acquire power sites and of the methods employed when such sites are opened to entry. There is no reason to assume that any different result would follow the segregation from the national forests of agricultural lands that control valuable sites of this character.

Such claims, furthermore, are not necessarily acquired by power companies for immediate development and use. In many instances the sole purpose is to control undeveloped power and prevent its passing into the hands of possible competitors. These sites will be held until the market permits the development and sale of the electric energy which they are capable of producing without affecting the prices paid by consumers. This is the avowed policy of many of the larger companies which control the sale of electric power in particular regions. The entry of such lands, therefore, in a majority of cases would result not only in checking agricultural development, but also in checking development of any kind for an indefinite period. It would simply strengthen monopolistic control of power resources in the hands of a few corporations.

A MONOPOLY OF WATER RIGHTS.

The monopolistic tendencies of the hydro-electric power companies through interlocking directorates and associated or subsidiary companies have been made evident in recent years. This monopoly will be extended

and strengthened to the extent to which the control of additional power sites can be secured by acquiring national forest lands under the guise of homestead settlement, in many instances very small tracts of arable land along mountain streams being sufficient.

There are, roughly, 12,000,000 horsepower capable of hydro-electric development in the national forests. Probably half of this amount is now under the complete control of the United States. That half will have a minimum value when marketable of at least \$600,000,000. The net result of legislation like that proposed by the Senate, as to agricultural lands which control these water powers, would be virtually an absolute grant of such powers to corporate ownership. To the extent to which the public ownership of water powers in the national forests is impaired by such grants, private monopoly of power will be strengthened. The ability of the Government to regulate or control such monopoly by ownership of the natural resources used will be correspondingly reduced. In many instances the wholesale segregation of agricultural lands now proposed would accomplish indirectly what the House of Representatives refused by a decisive vote to permit when it rejected a bill to grant national-forest lands to the Hydro-Electric Co., of California, last winter (H. R. 12572).

Strong pressure is brought upon the Forest Service to permit the private acquisition of other areas whose ownership would result in monopolistic control of other

resources of great value. An excellent illustration is the effort to obtain control of watering holes in the semi-arid regions of the Southwest. The control of single water holes on many of the national forests carries with it the control of large adjacent areas of dry range, often 25,000 to 50,000 acres, which cannot be used unless the stock has access to the water. The practical effect would be to deprive all stock growers, except the entry-man who acquires the water, of the use of the range. Many grazing monopolies have been developed in this manner on the public lands of the West by the location of homestead and pre-emption entries and even of mineral claims. This effort to monopolize range has continued since the creation of the national forests, by attempts to secure, under the forest-homestead act and by mineral locations, water holes as chiefly valuable for agriculture. A recent instance on the Kaibab National Forest, Ariz., has been brought to my attention, where mining claims were systematically located so as to control all of the stock-watering places in an enormous area of dry range. These have been patented and are now owned by a large cattle company. Little patches of land surrounding seeps and lakes in these regions are usually arable. The Nelson amendment adopted by the Senate would require them to be opened to entry. Such entries would not be made for agricultural purposes, but for the monopolistic control of grazing lands.

LAKESIDE ENTRIES.

Many areas in the national forests possess great

value to the public for summer camping grounds and recreation. They may or may not be capable of cultivation. Their special value lies in the control of the use and enjoyment of natural features of the forests.

Four hundred thousand people annually resort to these mountain regions for recreation. Many areas on the shores of lakes and large streams, in sections of exceptional scenic beauty, and in mountain meadows that afford the only pasturage for pack and saddle horses, serve their highest usefulness as camping grounds for the public. The private control of such lands, permitting the collection of fees or tolls for uses now secured free from the Government, would be of no small value to entrymen. Many efforts have been made to secure tracts of this character under the forest homestead act. Some are entirely unsuited by soil and climate for farming purposes; others are, in whole or in part, susceptible of cultivation. Powerful pressure has been used upon the Forest Service to throw open tracts on the shores of many of the principal lakes in the national forests, which include the best camping grounds in the vicinity and largely control the use of the lakes themselves.

Fortunately there is no law that permits the private acquisition of lands of this sort that are not suited for agriculture. But even if their tillage is possible, the Forest Service has declined to open them to entry, when the result would be monopoly of camping and recreation grounds and the prevention of free enjoyment of these privileges by the public. Such lands are not wanted for

agriculture. They are not chiefly valuable for agriculture, as the present law requires, because of the far greater service they are rendering to increasing numbers every year for recreation and health.

The amendment adopted by the Senate made the opening of such lands mandatory wherever cultivation is possible. The net result would be, not settlement, but the monopoly by shrewd entrymen of valuable privileges now shared by the people at large.

Small tracts here and there must be used by the Forest Service in protecting and administering the national forests. These areas consist in part of stations where the field force is housed and forage produced as far as practicable for the horses, which must be maintained by the Government for the protection of the forests and by rangers for their official duties. It is essential that the rangers be stationed on the forests directly where their work is to be done. The forests can not be protected without placing rangers on them at strategic points. Over and over again fires that would have caused enormous damage have been extinguished promptly, because of the proximity of a well-located ranger's headquarters. Pastures and facilities for storing fire-fighting supplies are equally essential.

To administer the forests, right of way for roads, trails, and telephone lines must be retained. National-forest timber can not be utilized without sites for saw-mills and banking grounds. Land for all of these pur-

poses is not only needed by the Government in protecting and administering the forests, but needed by the public in using them. Nurseries where young trees are grown for reforestation must be had. Thirty-one are now maintained, aside from a number of stations for collecting, extracting, and storing forest-tree seed. Without these facilities little or nothing can be done toward the reforestation of denuded lands. The areas now set aside for all administrative purposes average but 1 to each 33,000 acres of national-forest land. There is serious danger that the more intensive administration of the forests which the future will demand will find the Government inadequately equipped with sites for these essential needs. If any error has been committed, it is the release to settlers of too many tracts that will ultimately be required for public use.

Possibly 50 per cent of the ranger stations contain some arable land. Some twenty-five hundred of them have been improved—the headquarter stations with barns, cabins, and fencing, and by clearing and cropping the land; the nurseries with water systems, intensive cultivation, fertilizing, and suitable buildings; the patrol stations with lookout towers, cabins for storing fire-fighting tools, and small pastures. Over \$270,000 have been expended for this equipment, which is absolutely essential to the maintenance and usefulness of the national forests.

WHAT THE SENATE PROPOSED.

Frequent efforts have been made to force the open-

ing to entry of tracts selected and even improved by the Government for these purposes. Certain homesteaders not only want land but stipulate in the order that it shall be provided with a substantial house and barn, and that the rough work of clearing, fencing, and raising the first unremunerative crops shall be done in advance. It has remained for the Sennate to propose a law which, if enacted, would require that this entire equipment of land and improvements be given out of hand to the first applicants, wherever arable land is involved. More than this, the United States would be forever prohibited from reserving for its own use an acre of agricultural land within the national forests. Such action would paralyze the administration of the forests in practically every particular. It would be as reasonable to expect the city of New York to furnish efficient fire protection while forbidding the use of a square foot of land within its borders for housing fire-fighting apparatus.

Nothing could indicate more clearly the purposes of the forces massed behind the latest attack upon the national forests. Men who thus propose to cripple their protection and administration have but one object in view—the breaking up of the forests altogether and the end of conservation as applied to these national resources.

The Forest Service is providing for the settlement of all land in the national forests that is more valuable for agriculture than for other uses and that is not required by the Government in administration. The sys-

tematic classification of such areas was begun in some of the northwestern forests two years ago. Such a classification, under the provisions of the forest homestead act, has subsequently been extended into each of the six national forest districts. It is being prosecuted at the present time as rapidly as the funds made available by Congress will permit.

Under this classification, areas that are essential for public purposes in the administration and protection of the national forests, areas that are chiefly valuable for the control of water powers, and areas that are required for the general use of the public will be reserved. All other lands having value for agriculture will be opened to the homesteader. If their present value for timber greatly exceeds their value for farming, and would invite speculation rather than bona fide settlement and cultivation, the timber will be removed under sale at the earliest possible time and the land then opened for entry. This method has been followed on a number of national forests during the past two years. It has eliminated timber speculation and promoted substantial and permanent agricultural development.

Localities where homesteads have been entered under this plan stand out today in sharp contrast to regions where heavily timbered lands were entered by speculators prior to the creation of the national forests and subsequently acquired and held by lumber interests.

This is the wisest and most logical method of segregating agricultural lands from the national forests. It

is the only method that will insure the acquisition of such lands by settlers in good faith for agricultural use and that will protect the public from monopoly of timber and power. It is my strong conviction that legislation on this subject should be in harmony with this policy and with the provisions of the forest homestead act, which authorizes the Secretary of Agriculture to deal with the question in exactly this way.

FALLACIES ABOUT FOREST LANDS.

Legislation like that adopted by the Senate, on the other hand, would require the opening to homestead entry of lands primarily more valuable for other purposes than for agriculture. Such legislation would not help agricultural settlement in the West or American citizens who are seeking homes. However disguised under the alleged interests of the home builder, it is in effect a direct attack upon the fundamental policy of reserving national resources like timber and water power under public control, to be administered for the general welfare. It would throw these resources open to private speculation and monopoly. It would aid not the homesteader, but the lumber company, the water-power company, the live-stock company, and many other large interests.

The enactment of such legislation will begin the breaking up of our remaining publicly owned national resources. The entire conservation policy is at stake. This should be thoroughly understood now by Congress and by the people.

Such a step should be taken deliberately and with full knowledge of its consequences. It should be for the people of the United States to choose whether they wish this backward step taken in the policy hitherto followed.

There are now three distinct and well-defined lines of attack on that policy. One is the demand that all the national holdings be parceled out as gifts to the several States. Another is the charge that the national forests are largely made up of lands that do not grow and can not be made to grow a forest cover.

The third charge that they are largely agricultural. In 1911 dismemberment of the national forests was threatened by the Heyburn amendment to the agricultural appropriation bill, which would have required all land not actually bearing at the present time 4,000 feet of merchantable timber to the acre to be thrown out. In the present year, besides the agricultural lands amendment, legislation was proposed to hand over national forests to State ownership.

The net result of a long campaign of misrepresentations has been to create a belief not only that the forests are largely agricultural lands, but also that they are largely lands on which forestry can not be practiced. This belief is now sufficiently general to make sudden legislation likely at any session of Congress.

In this way an amendment of far-reaching results could easily be passed, with little discussion and no real appreciation on the part of many voting for it of its true

character and disastrous effects. The national forests are not blocking development. They are blocking speculation, shortsighted exploitation, and spoliation of the people at large.

Planks looking to the overthrow of the national forest policy have been introduced into the platform of one of the great political parties. It is time for the public to recognize the facts in the situation.

The article as printed in the *Saturday Evening Post* is not printed, but above articles are certified up by order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 346

is Bulletin No. 88, issued June 17, 1911, by U. S. Department of Agriculture, Forest Service—Henry S. Graves, Forester. "Properties and uses of Douglas Fir." This exhibit at page 11 contains diagram or map purporting to show "The General Range of Douglas Fir," and includes in that range Oregon and Washington lying west of and including the Cascade mountains, and portions of this exhibit are printed as part of the testimony of Homer D. Angell, volume 6, page 2789 of record.

This exhibit is not otherwise printed, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 347

is Circular 150, issued January 23, 1909, by U. S. De-

partment of Agriculture, Forest Service, Gifford Pinchot, Forester. Subject, "A Study of the Pacific Coast and Rocky Mountain Forms," by E. H. Frothingham, Forest Assistant. Page 13 of Circular 150 purports to give the range of Douglas Fir, showing north coast region No. 1 as including Oregon and Washington lying west of and including the Cascade Range.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 348

is a circular or bulletin issued by the Department of Commerce and Labor, Bureau of the Census, E. Dana Durand, Director. Forest Products, No. 2 Lumber, Lath and Shingles—1910. Compiled in co-operation with the Department of Agriculture: Forest Service, Henry S. Graves, Forester. Issued February 20, 1912. Part of this exhibit is printed in the testimony of Homer D. Angell, volume 6, page 2795 et seq of record, being parts of pages 4, 5 and 6 of this pamphlet, diagram page 7, and 2 paragraphs following, and parts of pages 9, 10, 13 and 17.

This exhibit is not otherwise printed, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 349

consists of silvical leaflets, numbers 2, 4, 5, 7 and 8, all issued in 1907 by the U. S. Department of Agriculture, Forest Service,—Gifford Pinchot, Forester, and purporting to describe Port Orford Cedar, (range and oc-

currence), White Fir (range and occurrence), Lowland Fir (range and occurrence), Noble Fir (range and occurrence), Red Fir (range and occurrence).

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 350

purports to contain reports of Land Examiner W. J. Lander, of dates March 14, 1912, November 25, 1911, October 6 and 7, 1907, May 24, 1907, May 25, 1907, upon forms of Oregon & California Railroad Company, Land Department, reporting upon specific parcels of land,—and last three reports purporting to give estimates of timber, etc., on specific tracts of land.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 351

is a statement purporting to show lands examined, cruised and reported upon by D. C. McLennan, showing present condition, timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 352

purports to be a table showing unsold Congressional lands of the Oregon & California Railroad Company

as assessed and taxed, as shown by tax rolls of Multnomah county, for the years 1875 to 1890, both inclusive, and is as follows:

UNSOLD CONGRESSIONAL LANDS OF
THE OREGON AND CALIFORNIA RAIL-
ROAD COMPANY AS ASSESSED AND
TAXED, AS SHOWN BY TAX ROLLS OF
MULTNOMAH COUNTY

| Year | Acres | Valuation | Tax. |
|------|-------|-----------|---------|
| 1875 | 1112 | \$1080.00 | \$15.66 |
| 1876 | 1112 | 1080.00 | 16.20 |
| 1877 | 984 | 970.00 | 14.55 |
| 1878 | 5155 | 2085.00 | 36.48 |
| 1879 | 4877 | 3575.00 | 62.56 |
| 1880 | 4643 | 3325.00 | 58.18 |
| 1881 | 4522 | 3350.00 | 53.60 |
| 1822 | 3910 | 3250.00 | 47.13 |
| 1883 | 3030 | 2450.00 | 38.22 |
| 1884 | 2766 | 2350.00 | 41.36 |
| 1885 | 2566 | 2250.00 | 33.07 |
| 1886 | 2625 | 2250.00 | 27.78 |
| 1887 | 2406 | 2625.00 | 43.83 |
| 1888 | 2486 | 2625.00 | 45.15 |
| 1889 | 2137 | 4100.00 | 74.62 |
| 1890 | 2485 | 16960.00 | * |

* Total Tax\$358.88

Deducted, act. Double Assessment.....\$243.87

115.01

DEFENDANTS' EXHIBIT 353

purports to be a statement of lands examined, cruised and reported upon by A. W. Rees, showing acreage of, in present condition, classified as timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but is certified up under order of Court, and stipulation of parties.

DEFENDANTS' EXHIBIT 354

purports to be a report of A. W. Rees as timber cruiser, consisting of three sheets, showing timber estimate and description of various parcels of lands.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 355

purports to be a statement of portion of lands examined, cruised and reported upon by F. A. Elliott, showing area in present condition, timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 356

purports to be a statement showing lands examined by S. A. Carmichael, showing area in present condition,

timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 357

purports to be a statement showing lands examined, cruised and reported upon by T. J. Cronin, C. A. Cavell, M. F. McCowan, John D. McDonald, Ben Peck and William W. Penoyar, showing area in present condition, timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 358

purports to be report of Land Examiner A. W. Rees of a particular tract of land.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 359

is a statement purporting to show average assessed value per acre of unsold lands of the Oregon & California Railroad Company, for each year from 1892 to 1911, inclusive, and is as follows:

| Year | Average Value Per Acre |
|------------------|---------------------------|
| 1892 | \$.75 |
| 3 | .85 |
| 4 | .75 |
| 5 | .78 |
| 6 | .99 |
| 7 | .95 |
| 8 | .95 |
| 9 | .86 |
| 1900 | .87 |
| 1 | 1.02 |
| 2 | 1.33 |
| 3 | 1.94 |
| 4 | 1.77 |
| 5 | 2.94 |
| 6 | 4.56 |
| 7 | 7.83 |
| 8 | 8.29 |
| 9 | 8.34 |
| 1910 | 9.64 |
| 1 | 10.32 |
| highest—Columbia | \$31.33 |
| lowest—Tillamook | 4.74 |

DEFENDANTS' EXHIBIT 360

is the First Annual Report of the State Forester to the Governor of Oregon, 1911, F. A. Elliott, State Forester, transmitted to the Governor December 1, 1911.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 361

is a pamphlet entitled "The Forests of Oregon" by Henry Gannett, published by Department of the Interior, U. S. Geological Survey, Charles D. Walcott, Director, Washington, Government Printing Office, 1902. This exhibit also has in pocket attached a map of the state of Oregon purporting to show the classification of lands and forests prepared by Gilbert Thompson, from information obtained by A. J. Johnson, 1900, and purports to show on this map, according to legend: Timberless area, Woodland, timber ranging from

0 to 5000 ft. board measure, per acre

5000 to 10000 ft. board measure, per acre

10000 to 25000 ft. board measure, per acre

25000 to 50000 ft. board measure, per acre

50000 ft. board measure, and over, per acre;

Barren, Burnt, Cut timber—not restocking, cut timber—restocking, and northern limit of redwood.

This exhibit and map not printed, but certified up under order of Court and stipulation of parties.

is as follows:

STATEMENT SHOWING TOTAL AREAS EXAMINED BY THE CRUISERS
NAMED AND SHOWING THE PRESENT CONDITION OF SUCH ARE-
AS AND THE PROBABLE CONDITION AFTER SUCH AREAS MAY BE
DENUDED OF THEIR PRESENT TIMBER GROWTH.

| Field Agent | Present Condition | | | Condition When Denuded | | |
|--------------|-------------------|-----------------|------------------|---------------------------|------------------|----------------|
| | Examined Acres | Timber Acres | Grazing Acres | Agri. Acres | Grazing Acres | Agri. Acres |
| A W Rees | 16,351 | 7,124 | 6,282 | 2,945 | 10,866 | 5,485 |
| A W Rees | 31,907 | 29,492 | 2,295 | 120 | 30,740 | 1,167 |
| D C McLennan | 170,935 | 151,725 | 13,685 | 5,525 | 142,025 | 28,910 |
| D C McLennan | 17,104 | 8,479 | 8,192 | 433 | 15,916 | 1,188 |
| | | | | | | 7349 |

| Field Agent | Present Condition | | | | Condition When Denuded | | | |
|-----------------|-------------------|-----------------|------------------|----------------|---------------------------|----------------|--|--|
| | Examined Acres | Timber Acres | Grazing Acres | Agri. Acres | Grazing Acres | Agri. Acres | | |
| | | | | | | | | |
| L D McLeod | 65,681 | 24,108 | 37,125 | 4,448 | 57,506 | 8,175 | | |
| S C Bruce | 170,309 | 134,312 | 27,133 | 8,864 | 132,669 | 37,640 | | |
| S A Carmichael | 89,737 | 56,756 | 30,704 | 2,277 | 84,599 | 5,138 | | |
| C A Cavell | 55,618 | 52,146 | 3,000 | 472 | 46,752 | 8,866 | | |
| M F McCown | 9,755 | 8,100 | 1,655 | | 9,755 | | | |
| T J Cronin | 3,941 | 3,253 | 446 | 242 | 3,258 | 683 | | |
| Ben Peck | 13,664 | 12,592 | 1,000 | 72 | 12,544 | 1,120 | | |
| Jno. D McDonald | 10,206 | 10,206 | | | 10,206 | | | |
| Wm. W Penoyar | 4,230 | 3,350 | 685 | 195 | 3,395 | 835 | | |
| F A Elliott | 2,060 | 1,878 | 157 | 25 | 1,948 | 112 | | |
| | | | | | | | | |
| | 661,498 | 503,521 | 132,359 | 25,618 | 562,179 | 99,319 | | |
| | | 76% | 20% | 4% | 85% | 15% | | |

DEFENDANTS' EXHIBIT 363

is a map of the State of Oregon, published by J. K. Gill Co. of Portland, Oregon, purporting to show in red outline of Oregon & California Railroad Company, and of land grant made by Act of Congress approved July 25, 1866; and in green outline of Oregon Central Railway Company, West Side, and limits of land grant approved by Act of Congress May 4, 1870.

This map is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 364

is form used by N. H. Martin in making reports on lands, dated October 23, 1912.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 365

is Scarborough's Census Map of Washington and Oregon, purporting to show in different colors, counties, cities, villages, postoffices, steam and electric railways, with stations and distances between stations, and other features, complete index to all places on map, with population according to Census of 1910. Published by the Scarborough Company, Indianapolis, Indiana.

This map is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 366

is a map purporting to show the location of the timber lands on the public domain (approximate), June 30, 1883, to accompany "Public Domain" by Thomas Donaldson. This map purports to show in green colors the locality of the timber lands, and includes therein Oregon and Washington west of and including the Cascade Mountains.

This exhibit is not printed but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 367

is a photograph: View of Oregon City—Willamette Falls. Railroad graded under Elliott in 1868, and is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 368

purports to be memorandum of agreement made April 23, 1867, between the Oregon Central Railroad Company and Albert J. Cook, for the construction of 159 miles of railroad and is as follows:

Memorandum of an Agreement made this 23d day of April in the year of our Lord One thousand eight hundred and sixty seven (1867) by and between the Oregon Central Railroad Company organized under and in accordance with the general laws of the State of Oregon, of the first part & Albert J. Cook of the second part—

WITNESSETH

That whereas the party of the first part own the right, privilege and franchise for constructing, equipping and running a railroad from Portland in the State of Oregon South to the California line; and whereas the party of the second part doth agree and hereby agrees with the party of the first part to build and equip one hundred and fifty miles of said railroad, with all necessary rolling stock, from Portland South through the Willamette Valley for the sum of Five Millions Two Hundred and Fifty Thousand Dollars (\$5,250,000.00) reckoned at gold or specie value, that is to say if payment from time to time be made in national currency, now so called it shall be in payment for so much only as the same is worth in gold at the time of such payment, and so it shall be reckoned with anything else that may be received in payment at the time of such payment.

And the party of the second part doth further agree with the party of the first part to build and equip with rolling stock complete for the working of the same, that is to say the road shall be built upon a uniform gauge of four (4) feet eight (8) and one half ($1\frac{1}{2}$) inches, the maximum grade not to exceed eighty feet (80 ft) per mile, and a minimum curvature of ten degrees (10 deg.) The width of the roadbed to be eleven feet on the surface. The iron used shall be the best quality known as the T rail weighing at least forty five pounds per linear yard. The ties shall be of the best wood to be obtained

for strength and durability, not less than six by eight inches, and eight feet in length, to be laid at the rate of two thousand six hundred and forty feet per mile. The amount of rolling stock shall consist, for the first division of twenty five miles, extending from Portland to the French Prairie of two first class locomotives weighing not less than sixteen tons each, two first class passenger cars, two baggage or express cars. The next division of about twenty five miles reaching to Salem, one first class locomotive of not less than sixteen tons weight, two first class passenger cars, one baggage car, twelve box cars and two platform cars. For the next division of about twenty five miles reaching to Albany, one first class locomotive, weighing not less than twenty six tons, two first class passenger cars, one baggage car, twelve each box and platform cars. For the next division of about ten (10) miles reaching to near Corvallis, one first class locomotive weighing not less than twenty six tons, two first class passenger and six box cars. For the next division of about thirty miles to Eugene City, one first class locomotive weighing not less than thirty tons, three first class passenger, one baggage and ten each box and platform cars. For the last division of about thirty five miles, two first class locomotives weighing not less than thirty six tons, four passenger cars, twenty box cars and six platform cars.

The contractors shall provide suitable stations and turn outs at various points to be designated by the Company at the rate of one for every ten (10) miles, water tanks as often as once in every twenty miles, where water

can conveniently be had; such locations to be designated by the company. At the large towns designated as the termini of the different divisions, suitable buildings shall be erected for the accommodation of passengers and freight. Depots of ample size to accommodate the business of the road shall be erected in a substantial and durable manner, also engine houses of a sufficient capacity for the safe housing of all the engines.

The contractors shall erect and furnish suitable machinery for a repair shop at a point designated by the company. The president of the company and the engineer of construction shall compose a commission whose approval shall be necessary to the acceptance of the road.

And the party of the second part doth agree to receive payment for the building and equipping said one hundred and fifty miles of railroad, in the company's first mortgage railroad bonds, payable in twenty years from the date of the same with interest semi-annually, *Provided*, that in case the company while the road is being constructed, is unable from its resources to pay the interest on its bonds issued to the said party of the second part, the same shall be payable in the first mortgage bonds of the company of regular series and character at their par value. All said bonds to be secured by a first or bottom mortgage on said one hundred and fifty miles of railroad and on all the rolling stock thereof. And such amounts in specie as the company may provide. And the party of the first part hereby promises, covenants and agrees with the party of the second part to pay

the sum of five millions two hundred and fifty thousand dollars receivable at gold or specie value as aforesaid, to the party of the second part or to its assigns for constructing and equipping with rolling stock said railroad from Portland in the State of Oregon to the head of the Willamette Valley or a distance of one hundred and fifty miles, and the party of the first part promises, covenants and agrees with the party of the second part to issue or cause to be issued the first-mortgage, gold-bearing railroad bonds of the Oregon Central Railroad Company, the payment of which shall be secured by a bottom mortgage, on said one hundred and fifty miles thereof, and on the rolling stock of the same. Interest on said bonds to be made payable at the rate of seven per cent per annum as aforesaid. And the said party of the first part agrees that said bonds shall be issued in such form and sums, and to be endorsed if need be to make the same negotiable and satisfactory; and that the engineers employed are to be paid by the party of the second part; and shall be nominated by the party of the second part if they see fit to nominate the same, and that the party of the second part shall be entitled to the earnings of the road until such time as the same is accepted by the company.

And the party of the first part further agrees to deposit in some safe bank in the State of New York designated by the party of the second part, fifteen thousand dollars (\$15,000.00) per mile of the amount of said railroad bonds to be delivered to the party of the second part, in payment aforesaid as the Bills of Lading

for iron, rolling stock & other materials shall from time to time be accepted by such engineer; *Provided*: That the company shall not sell or dispose of their regular first mortgage bonds at less than their par value. And the party of the first part further agrees to make monthly payments upon the work as approved by the engineer, reserving twenty per cent of the amount of work done each month until the division is accepted by the commissioners.

And the party of the first part further agrees to use every means in their power to obtain as much cash and money aid from the people of Oregon as is possible for the furtherance of this enterprise.

And the party of the first part further agree to issue two millions of preferred stock of the Oregon Central Railroad Company, bearing interest at seven per cent per annum and deliver the same to the party of the second part immediately after the signing of this contract.

And it is further understood and agreed between the parties hereto, that the work shall be commenced within one year after the signing of this contract and the whole one hundred and fifty miles completed within five years thereafter.

And it is also understood that the common stock of the O. C. R. R. Co. shall be offered for sale to the people of Oregon at ten cents on the dollar, and at the expiration of six months from the commencement of work on the road subscriptions at the same rate shall be received

from any parties whomsoever for the amounts then remaining unsold.

In testimony whereof we Geo. L. Woods, President and Sam'l A. Clarke, Secy., on behalf of the Oregon Central Railroad Company as authorized by the Board of Directors, have hereunto affixed our
 (35 cents) hands and the seal of said Company, on
 (in revenue) the part of said party of the first part to
 (stamps) the foregoing contract, this the twenty
 (Seal) third day of April A. D. 1867, at the of-
 fice of said Company in the City of
 Salem, Marion Co., Oregon.

Sam'l A. Clarke

Secretary

O. C. R. R. Co.

Geo. L. Woods

President

O. C. R. R. Co.

Witness

And for the party of the first part

T. R. Brooks

Albert J. Cook, by

S. G. Elliott, his

J. H. Parker

Attor'y in fact

(Endorsement on back).

In consideration of the sum of one dollar to me in hand paid, by S. G. Elliott, of San Francisco, the receipt whereof is hereby acknowledged, I do hereby transfer, assign forever, all my right, title or interest in and to the within instrument.

Witness my hand and seal this second day of May,
 A. D. 1867.

In presence of
W. D. Litchfield

Albert J. Cook

(5 cents)
(revenue stamp)

(Endorsement on back of 5th page).

For and in consideration of the sum of Three Thousand (\$3000) Dollars to me paid by N. P. Perrine of the City & County of San Francisco, State of California, (the receipt of which before the execution of this assignment is by me acknowledged) I do hereby assign transfer and set over said N. P. Perrine the undivided half of seven-tenths of the within & foregoing instrument being three & one-half tenths thereof, excepting the preferred stock of said O. C. R. R. Company.

In witness whereof I have hereunto set my hand & seal this 20th day of May A. D. 1867.

S. G. Elliott (Seal)

In presence of)
)
Walter Van Dyke)

(5 cent)
(revenue stamp)

(Cancellation on front page in red ink; signatures in black ink).

In consideration of one Dollar paid by each of the parties hereto by the one to the other and the receipt whereof is by each of the parties hereto hereby acknowledged and in consideration of other valuable considerations moving from each to the other, it is hereby agreed

between the Oregon Central Railroad Company and Ben Holladay & Co. parties to the within contract that the within contract be and the same is hereby cancelled, set aside and held for naught.

Witness the hands of Ben Holladay & Co. and the Oregon Central Railroad Company by the signatures of I. R. Moores President and George E. Cole Secretary thereof and the seal of said corporation attached this 29th day of March A. D| 1870.

Witness present

Ben Holladay & Co.

J. H. Mitchell

Oregon Central Rail Road

M. N. Chapman

Company

By I. R. Moores

President

(Seal) Oregon Central RailRoad Company
 (Incorporated)
 (Oregon Central) By Geo. E. Cole
 (Railroad Co.)
 (1867) Secretary

(Filing Marks on back).

Filed Nov. 24, 1875

Geo. L. Story Clerk

By R. L. Durham Deputy.

Filed June 19" 1876

D. H. Murphy

Clerk.

DEFENDANTS' EXHIBIT 369

purports to be memorandum of agreement of date May 12, 1868, between the Oregon Central Railroad Company and A. J. Cook & Company, for the construction and equipment of 210 miles of railroad, and is as follows: Memorandum of an Agreement made this 12 day of May in the year of our Lord One Thousand Eight Hundred and Sixty Eight by and between "The Oregon Central Railroad Company" organized under and in accordance with the general laws of the State of Oregon of the First Part and the firm of A. J. Cook & Co. of the Second Part:

Witnesseth,

That whereas the party of the First Part own the right, privilege and franchise for constructing, equipping and running a railroad from Portland in the State of Oregon, South, to the California line, and, *whereas*, the said company of the First Part did contract with the party of the Second Part to build one hundred and fifty miles of the road, commencing at Portland and extending up the Willamette Valley a distance of One Hundred and Fifty miles, said road to be completed within five years from the date thereof; and *whereas*, the party of the First Part are desirous of extending the road to the State line between Oregon and California and as a means of securing the early completion of the same have entered into the following agreement with the said firm of A. J. Cook & Co. upon the following terms.

The party of the Second Part doth agree and hereby agrees with the party of the First Part to build & equip two hundred and ten miles of said railroad, more or less, to or near the State line, with all necessary rolling stock, from the head of the Willamette Valley, commencing at the terminus of the first division of one hundred and fifty miles, and to continue the construction of the same to the South boundary line of Oregon as soon as the first division shall be completed, for the sum of Twelve millions, one hundred and twenty eight thousand dollars (\$12,128,000.) reckoned at gold or specie value, that is to say, if payment from time to time be made in national currency, now so called, it shall be in payment for so much only as the same is worth in gold at the time of such payment, and so it shall be reckoned with anything else that may be received in payment at the time of such payment.

And the Party of the Second Part doth further agree with the Party of the First Part to build and equip with rolling stock complete for the working of the same, that is to say, the road shall be built upon a uniform gauge of four (4) feet, eight (8) inches and one half ($\frac{1}{2}$), the maximum grade not to exceed 80 feet per mile, except twelve (12) miles through the Canyon, which twelve (12) miles shall not exceed one hundred (100) feet per mile, and a minimum curvature of (10 deg) ten degrees; the width of the road bed to be eleven feet on the surface. The iron used shall be the best quality known as "T" rail, weighing at least fifty pounds per linear yard; the ties shall be of the best wood to be

obtained for strength and durability, not less than six by eight inches and eight feet in length, to be laid at the rate of two thousand six hundred & forty (2640) per mile.

The amount of rolling stock shall consist of ten first class locomotives, weight not less than twenty one each,—to be furnished at the rate of one for every twenty miles,—and twenty five first class passenger cars—furnished at the rate of one for every ten miles,—four baggage cars, forty box cars and twenty platform cars.

The contractors shall provide suitable stations and turn outs at various points to be designated by the company, at the rate of one for every ten miles; water tanks as often as one in every twenty miles where water can conveniently be had. At the large towns suitable buildings shall be erected for the accommodation of passengers and freight, also engine houses of a sufficient capacity for the housing of all the engines.

The President of the Company and the Chief Engineer of construction shall compose a commission whose approval shall be necessary to the acceptance of the road, and the contractors shall have the right & free use of the railroad from Portland to the extreme southern terminus for the transportation of all the material required in said work, also, as well, all men, horses, mules, cattle, sheep, hogs and provisions of any & every kind required by said party while constructing said road; also all iron, iron rails, bars, castings, spikes, chains switches, machinery, frogs, car wheels, and all timbers for bridges,

trestle work, cattle guards, cross ties and timbers for all depots, stations, and all other material required or to be used, with every thing else required by said contractors in the construction of said road, until said two hundred and ten miles of said road or reaching to the California line, be it more or less, has been completed at the same rate per mile. And the party of the second part shall be entitled to the earnings of the road until each section of twenty (20) miles is accepted by the company.

And the Party of the First Part promises, covenants and agrees with the party of the second part, to issue or cause to be issued the first mortgage gold bearing railroad bonds of The Oregon Central Railroad Co., the payment of which shall be secured by a bottom mortgage on said two hundred and ten miles, or reaching to the California line, be it more or less, and on the rolling stock of the same, interest on said bonds to be made payable at the rate of seven per cent per annum as aforesaid, and the said party of the first part agrees that said bonds shall be issued in such forms and sums and to be endorsed if need be to make the same negotiable and satisfactory, and that the engineers employed are to be paid by the party of the second part, and the party of the second part shall be entitled to the earnings of the road until such time as the same is accepted by the company.

And the party of the First Part further agrees to execute a mortgage of thirty two thousand dollars per mile (\$32,000.) as a first mortgage on the whole distance of two hundred and ten miles (210) commencing at the

terminus of one hundred and fifty miles at the head of the Willamette Valley, extending to the State line between Oregon & California, and also to execute a second mortgage for twenty five thousand seven hundred and fifty two (\$25,752.) dollars per mile.

The party of the first part promise and agree to execute the first mortgage bonds at the rate of twenty five thousand (25,000) dollars per mile, and deliver one million dollars of the same to the party of the second part as soon as the said party of the second part shall report themselves in readiness to enter upon the commencement of the construction of the road under this contract, and exhibit satisfactory evidence that they have purchased materials and stock equal in value to the amount of bonds so issued and to make advancement of bonds at the rate of twenty five thousand (25,000) dollars per mile, for distance of fifty miles in advance of work on the road whenever the party of the second part may request the same & give evidence as required above as to the purchase of materials, or of work performed, and to make monthly settlements upon the report of the Chief Engineer, reserving only one tenth part of the amount reported to be due by said engineer, until a distance of twenty miles shall be completed, when the company shall pay the full amount of fifty seven thousand seven hundred and fifty two dollars per mile to said party of the second part as provided in the first part of this contract.

It is understood that the company will exert itself to

obtain aid from the State of Oregon to assist in the building of this road.

It is further agreed that the stock shall be increased to eleven millions of dollars, and three millions of preferred stock shall be executed and delivered to the contractors as soon as the first distance of one hundred and fifty miles shall be completed.

The stock shall be in the following form, to wit:

| Capital Stock | No. | Second Series | Shares |
|--------------------------------------|---|---------------|--------|
| \$11,000,000 | The Oregon Central Railroad Company Salem Marion County | | |
| \$3,000,000. | State of Oregon April 1868 | | |
| Preferred Stock (non-assessable) | This Certifies that Albert J. Cook & Co. are entitled to shares of | | |
| Gold Interest bearing | the Capital Stock of The Oregon Central Railroad Company, trans- ferrable on the Books of the Com- pany subject to the provisions of the | | |
| (Vignette) | By Laws, by endorsement hereon | | |
| & \$8,000,000. | & surrender of this certificate. The | | |
| Common | holder of this Second Series Certi- ficate is entitled to 7 per cent yearly | | |
| or | interest in gold upon the amount of | | |
| Assessable | \$3,000,000. advanced by the con- tractors as a working capital under | | |
| Stock | Second Contract in the construction of the Company's road. Said Sec- ond Series Certificates of Stock are | | |
|Shares | issued as collateral security for that amount and to be | | |
|Each | | | |

non-assessable, the payment of which is secured by a Resolution in the following form "*Resolved*, by the Board of Directors of The Oregon Central Railroad Company, that the President and Secretary are hereby requested to execute \$3,000,000. of *non-assessable Preferred Stock*, and deliver the same to the contractors as part payment for the construction of the road, and as collateral security for moneys advanced by said contractors as a working Capital. Said stock to be *non-assessable* and to bear interest at the rate of 7 per cent per annum, payable in gold coin, and there is hereby set apart as a sufficient amount out of the net earnings of the second division of the road, extending from the end of the first division to the Oregon State line, to pay the same.

(Vignette)

Secretary

President

The parties hereto agree that the terms of this contract shall come in force as soon as the first One Hundred and Fifty miles shall be completed & that it shall be completed within five years from that date.

And in relation to all the terms, stipulations, covenants and agreements of the foregoing contract, it is hereby expressly agreed, that on the completion of the present contract for 150 miles of road, it shall be optional with The O. C. R. R. Company, party of the First Part hereto, to surrender to the contractors the road herein provided for and assign to them all the rights of the company therein, in which case the said contractors shall

accept the same in full satisfaction of all claims arising under the contract as against said Company, or their road of 150 miles so now being constructed, and all facilities within their power shall be extended by said O. C. R. R. Company to enable said contractors to hold, own & operate said extension of said road under the laws of Oregon.

| | | |
|---------------|-------------|------------------------|
| Witnessed by | | I. R. Moores President |
| Geo. Anderson | (Seal) | O. C. R. R. Co. |
| | (Oregon) | |
| E. D. Towl | (Central) | S. A. Clarke |
| | (Railroad) | Secretary O.C.R.R. |
| | (Co.) | Company |
| | (Incor-) | |
| | (porated) | |
| | (1867) | A. J. Cook & Co. |

(Cancellation on front page in red ink; signatures in black ink).

In consideration of One Dollar paid by each of the parties hereto by the one to the other and the receipt whereof is by each of the parties hereto acknowledged and in consideration of other valuable considerations moving from each to the other. It is hereby agreed between the Oregon Central Railroad Company and Ben Holladay & Co. parties to the within contract that the within contract be and the same is hereby cancelled set aside and held for naught.

Witness the hands of Ben Holladay & Co. and the Oregon Central Rail Road Company by the signatures of I. R. Moores President and George E. Cole Secretary thereof and the seal of said corporation attached

this 29th day of March A. D. 1870.

| | |
|------------------|--------------------------|
| Witness present | Ben Holladay & Co. |
| J. H. Mitchell | Oregon Central Rail Road |
| M. N. Chapman | Company |
| | By I. R. Moores |
| (Seal) | President |
| (Oregon Central) | Oregon Central Rail Road |
| (Railroad Co.) | Company |
| (Incorporated) | By Geo. E. Cole |
| (1867) | Secretary. |

(Filing Marks on back).

Filed Nov. 24 1875

Geo. L. Story Clerk

By R. L. Durham

Deputy

Filed June 19" 1876

D. H. Murphy

Clerk.

(40 cents in revenue stamps)

DEFENDANTS' EXHIBIT 370

is an assignment from Albert J. Cook to S. G. Elliott of his contract of April 23, 1867, with the Oregon Central Railroad Company, and is as follows:

Know all men by these presents: That I Albert J. Cook of the first part, for and in consideration of the sum of One Dollar, lawful money of the United States of America, to me in hand paid by S. G. Elliott, of San Francisco, of the second part, the receipt whereof is here-

by acknowledged, have bargained, sold and assigned, and by these presents do bargain, sell and assign, unto the said party of the second part, his executors, administrator, and assign, a certain contract with the "The Oregon Central Railroad Company," bearing date the twenty third day of April A. D. 1867 and executed at the city of Salem, Oregon.

In witness whereof I have hereunto set my hand and seal the second day of May A. D. 1867.

Albert J. Cook

Signed sealed and delivered)

in the presence of)

W. D. Litchfield)

(On margin).

Exhibit "W," attached to S. G. Elliott's deposition.

J. G. M.

DEFENDANTS' EXHIBIT 371

is a photograph, purporting to show "Retaining walls of dry rubble masonry at Oregon City. Put in by Elliott in 1868." Used as an exhibit in the case of Holladay and Emmet vs. Elliott et al. This exhibit is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 372

is a map of the Country Club Orchard Tracts, The Rogue River Orchard Company, owners.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 373

consists of certified copies of letters: May 7, 1870, J. D. Cox Secretary, to Hon. Jos. S. Wilson, Commissioner of the General Land Office; May 23, 1870, Jos S. Wilson, Commissioner, to Hon. George H. Williams, U. S. Senate; May 23, 1870, Jos. S. Wilson, Commissioner, to Register and Receiver, Oregon City, Oregon:—relating to transfer of the Oregon Central Railroad to the California and Oregon Railroad Company. Letter May 20 1872, Willis Drummond, Commissioner, to Hon. C. DeLano, Secretary of the Interior, referring to certain papers filed in his office by George H. Williams, Attorney General, for the purpose of obtaining a construction by the Department of the proviso of the Act of April 10, 1869, amendatory to the Act of July 25, 1866, namely, the 160-acre at \$2.50 an acre clause. Copy of this exhibit is as follows:

"M. L. 268839.

"B"

"M. F. H.

"DEPARTMENT OF THE INTERIOR

"GENERAL LAND OFFICE"

"WASHINGTON

"April 11, 1912.

"I hereby certify that the annexed copies of letters
"dated May 7th, and 23rd, 1870, and May 20th, 1872,
"respectively, are true and literal exemplifications of
"the originals and press-copies of letters in this office.

"IN TESTIMONY WHEREOF I have hereun-
"to subscribed my name and caused the seal of this office
"to be affixed, at the city of Washington, on the day
"and year above written.

(Signed) " H. W. SANFORD,

(Seal)

"Recorder of the General

"Land Office."

"M. L. 268839

L. G. & R. R.

"DEPARTMENT OF THE INTERIOR

"Washington, D. C., May 7, 1870.

"Sir:

"Evidence has been filed in this Department by Geo.

“E. Cole, Esq., Secretary of the Oregon Central Railroad Company, of Salem, Oregon, that said company have sold and transferred all their rights, interests, &c. to the California and Oregon Railroad Company, of Portland, Oregon.

“Very respectfully,

“Your ob’t servant,

“J. D. Cox,

“Secretary.

“Hon. Jos. S. Wilson,

“Com’r of the

“Gen’l Land Office.”

“DEPARTMENT OF THE INTERIOR

“GENERAL LAND OFFICE,

May 23d, 1870.

“Hon. G. H. Williams,

“U. S. Senate.

“Sir:

“Pursuant to your oral request of this morning, I have the honor to state, that evidence is on file to the effect that the ‘Oregon Central Rail Road Company,’ of Salem, Oregon, have sold and transferred all their rights interests, & c. to the California and Oregon Railroad Company of Portland, Oregon, and we have this day dispatched such information to the Register and Receiver at Oregon City, Oregon, and to be governed accordingly in relation to the matter.

“I am sir, very respectfully,

“Jos. S. Wilson, Commissioner.”

“DEPARTMENT OF THE INTERIOR,
“GENERAL LAND OFFICE,

“May 23, 1870.

“Register & Receiver,

“Oregon City, Oregon.

“Gentlemen:

“I have been advised by the Secretary of the Interior
“to the effect that the Oregon Central Railroad Com-
“pany of Salem, Oregon, have sold and transferred all
“their rights, interests, & c to the California and Oregon
“Railroad Company of Portland, Oregon, and you will
“be pleased to govern yourself accordingly in relation
“to the matter.

“Very respectfully,

Jos. S. Wilson,

“Commissioner.

“DEPARTMENT OF THE INTERIOR,
“GENERAL LAND OFFICE,

“May 20th, 1872.

“Hon. C. Delano,

“Secretary of the Interior.

“Sir:

“I have the honor to lay before you certain papers
“filed in this office by the Hon. Geo. H. Williams,
“Atty. General for the purpose of obtaining a con-

“struction by the Department of the proviso of the Act
“of Congress approved April 10th 1869 Stat. 16, p.
“47—amendatory to the Act of July 25th 1866, Stat.
“Vol 14— p. 239—granting lands to aid in the construc-
“tion of a Rail Road and Telegraph line from the Cen-
“tral Pacific Rail Road in California to Portland in
“Oregon, which reads as follows: ‘That the lands grant-
“ed by the Act aforesaid shall be sold to actual settlers
“only in quantities not greater than one quarter Section
“to one purchaser, and for a price not exceeding two dol-
“lars and fifty cents per acre.

“As the Company request an expression of opinion
“by the Department, the papers are hereby submitted.

“I am sir,

“Very respectfully,

“Willis Drummond,

“Commissioner.

DEFENDANTS' EXHIBIT 374

consists of certified copies of form of deed of European
& Oregon Land Company, letter from I. H. Moores,
Land Agent, to Hon. Willis Drummond, Commissioner
of the General Land Office, of January 23, 1874, and
letter of March 13, 1874, Willis Drummond to I. R.
Moore, in reference to lands said to have been erroneously
patented to the Oregon and California Railroad Com-
pany. Copy of this exhibit is as follows:

DEFENDANTS' EXHIBIT 374

"M. L. 268839.

"B"

"M. F. H.

"DEPARTMENT OF THE INTERIOR

"GENERAL LAND OFFICE

"WASHINGTON

"April 11, 1912.

"I hereby certify that the annexed copies of papers
"and letter, are true and literal exemplifications of the
original papers and press-copy of letter in this office.

"IN TESTIMONY WHEREOF I have hereunto

"subscribed my name and caused the

"seal of this office to be affixed, at

"the city of Washington, on the day

(Seal)

"and year above written.

(Signed) "H. W. SAWYER,

"Recorder of the General Land

"Office."

"Deed No. from the

"EUROPEAN AND OREGON LAND COM-

"PANY,

"Incorporated at San Francisco, Cal., December 19,

"1870,, under and pursuant to the Laws

"of California.

“KNOW ALL MEN BY THESE PRESENTS,
“That the European and Oregon Land Company, for
“and in consideration of the sum of
“..... Dollars, in legal money of the United
“States, to it in hand paid by
“of County, State of Oregon, the receipt
“whereof is hereby acknowledged, doth grant, bargain,
“sell, release and convey unto the said
“..... and legal
“representatives, the following described real estate,
“to-wit:
“containing according to the United States survey there-
“of 100 acres, be the same more or less.

“TO HAVE AND TO HOLD, the said premises,
“with all the rights, privileges and appurtenances there-
“unto belonging, unto the said
“..... and legal representatives forever.
“Reserving, however, and saving and excepting from
“the transfer made by these presents, any right of way,
“or reservations made by or for the Oregon and Cali-
“fornia Railroad Company.

“The said for
“..... and legal representatives hereby
“covenanting and agreeing that they shall and will con-
“struct and maintain along the lines of the said Oregon
“and California Railroad, or any of its branches, wher-
“ever the same may adjoin or traverse the above de-
“scribed premises, a good and substantial fence, suffi-
“cient to turn cattle.

“AND WHEREAS, the Oregon and California
 “Railroad Company, did, on the fifteenth day of April,
 “A. D. one thousand eight hundred and seventy, make,
 “execute and deliver to Milton S. Latham, Faxon D.
 “Atherton and *William Norris*, of the City of San Fran-
 “cisco, a certain Trust Deed, of that date, which is re-
 “corded in the office of the County Clerk of Multnomah
 “County, in the State of Oregon, wherein said Company
 “conveyed to the said Trustees, for the uses and purposes
 “in said Trust Deed mentioned, among others the lands
 “hereinbefore described.

“AND WHEREAS, the said Trustees, Milton S.
 “Latham, Faxon D. Atherton and William Norris, did
 “on the twenty-eighth day of March, A. D. one thousand
 “eight hundred and seventy-one, make, execute, and de-
 “liver to the European and Oregon Land Company, a
 “certain Indenture (to which said European and Ore-
 “gon Land Company and the Oregon and California
 “Railroad Company were parties, accepting and ratify-
 “ing the same) which is recorded in the offices of the
 “County Clerks of Multnomah, Clackamas, Marion,
 “Linn and Douglas
 “Counties, in the State of Oregon, whereby for the uses
 “and purposes in said Indenture set forth, the said
 “Trustees conveyed to the said Land Company, among
 “others, the lands hereinabove described:

“AND WHEREAS, the said European and Ore-
 “gon Land Company have sold and conveyed to the said
 and legal repre-

“sentatives, the above described real estate:

“NOW, THEREFORE, KNOW ALL MEN
“BY THESE PRESENTS, that we, the said Milton
“S. Latham, Faxon D. Atherton and William Norris,
“mentioned in said Trust Deed and Indenture, above
“referred to, in consideration of the sum of
“ Dollars, in Gold Coin of the United
“States to us in hand paid by the said European and
“Oregon Land Company, and the receipt whereof is
“hereby acknowledged, do hereby remise, release and
“forever quit-claim, unto the above mentioned grantee
“of the said Land Company, and to legal rep-
“resentatives, the real estate hereinabove described, to be
“by them held free and exempt from all liens, incum-
“brances and charges of said Trust Deed and Indenture,
“but subject however to the reservation and condition
“as to rights of way and fencing hereinabove recited.

“IN WITNESS WHEREOF, the said European
“and Oregon Land Company has caused these presents
“to be subscribed by its President and its Corporate
“seal to be hereto affixed and attested by its Secretary;
“and the said Trustees have hereunto set their hands,
“all at the City of San Francisco, in the State of Cali-
“fornia, on this day of in the year one
“thousand eight hundred and

“In the presence of

. President E. & O. Land
. Company.

.....)
.....) Trustees
.....)

“Attest,

“Secretary.

“M. L. 268839—D—3.

“STATE OF CALIFORNIA))
“CITY AND COUNTY OF SAN FRANCISCO) ss

“Be it remembered, that on this day of
“A. D. 18...., before me a Commissioner of Deeds for
“the State of Oregon, duly commissioned and sworn, ap-
“peared the European and Oregon Land Com-
“pany, by its President, and.....
“its Secretary, who were personally known to me to be
“the identical persons whose names are subscribed to the
“foregoing Instrument as President and Secretary of
“the said Land Company, and then and there acknowl-
“edged the signing and ensembling of the within Instru-
“ment, to be their voluntary act and deed, and the volun-
“tary act and deed of the said Land Company. And
“on the day of A. D. 18...., like-
“wise personally appeared before me, the within named
“Milton S. Latham, Faxon D. Atherton and William
“Norris, personally known to me to be the Trustees de-
“scribed in, and who executed the foregoing Instru-
“ment, and severally acknowledged before me that they
“executed the same as such Trustees freely and volun-
“tarily, and for the uses and purposes therein set forth.

“IN WITNESS WHEREOF, I have hereunto
“set my hand and affixed my official seal at the City of
“San Francisco, the day and year last above written.

.....

“Commissioner of Deeds for the State of Oregon

“I. R. MOORES, Land Agent.

“OREGON AND CALIFORNIA RAILROAD
COMPANY.

“LAND DEPARTMENT.

“Portland, Or. Jan. 23, 1874.

“Hon. Willis Drummond,

“Com’r. Gen’l. Land Office.

“Sir:

“Your letter of the 13th ult. addressed to Mr. Hol-
“laday Prest. O. and C. R. R. Co. with Copy of letter
“enclosed, relating to certain tracts of land for which
“Patents had been issued to the Company and which
“were subsequently ascertained to be embraced in valid
“claims, and requesting Mr. Holladay to execute a quit
“claim Deed to the rightful owners of such lands, has
“been referred to me with instructions to inform you,
“that *all* the lands enuring to the Company by the terms
“of the Act of July 25, 1866, have been disposed of to
“the European and Oregon Land Company. a Corpora-
“tion organized under the Laws of California, with its
“principal office in San Francisco, subject to a mort-

“gage to three Trustees to secure the payment of the
“bonded debt of the Board. To give clear title to the
“lands and free it from the mortgage lien, it is neces-
“sary to obtain title from the E. and O. Land Co. in
“which conveyance the Trustees join. One of the Trus-
“tees is now in Europe, but will return within the next
“sixty days, when the deeds will be duly executed as re-
“quested. “The claimants here have been notified of the
“condition of facts as stated above. I enclose one of our
“blanks which will fully explain the situation.

“Very respectfully,

“I. R. MOORES,

“Land Agent.”

“DEPARTMENT OF THE INTERIOR,

“GENERAL LAND OFFICE

“Washington, D. C.

“March 13, 1874.

“I. R. Moores, Esq.,

“Land Agt. Oregon & Cal. R. R. Co.,

“Portland, Oregon.

“Sir:

“The Register & Receiver at Oregon City, have re-
“cently filed James Waldrup’s Donation Certificate No.
“4325, covering lots 2 & 3 of sec. 13, Tp. 3 S., R. 3 E.,
“42.21/100 acres, settlement March 15th 1854.

“It is shown that the above lots were selected under
“the act of July 25th, 1866, and inadvertantly patented
“May 9th, 1871, to the ‘Oregon & California’ Rail Road
“Company.

“I therefore respectfully request a relinquishment
“of said lots on the part of said Rail Road Company, in
“order that Mr. Waldrup’s certificate may pass for pat-
“enting.

“The receipt of your letter of 23d Jany. last is
“acknowledged, stating that as soon as the return of one
“of the Trustees of your Company from Europe, the
“Company would execute ‘quits claim’ deeds for the
“tract requested by my letter of 22d April last.

“I have also to add that the printed form of ‘quit
“claim’ deed in use by the European & Oregon Land
“Company, and which accompanied your letter of 23d
“January, will be satisfactory to this office.

“Very respectfully,

“Willis Drummond, Commissioner.”

DEFENDANTS’ EXHIBIT 375

consists of certified copies of telegram, Schultze, Land Agent, to Commissioner of the General Land Office, June 20, 1876; July 14, 1876, letter J. A. Williamson, Commissioner, to P. Schulze, acknowledging receipt of letter and seven quit claim deeds; letter June 28, 1876, Schulze to Commissioner, forwarding deeds; deeds Nos. 146, 147, 148, 149, 150, 151, and 153 for certain tracts,

inadvertantly patented to O. & C. R. R. Co.; letter Schulze to Commissioner July 9, 1877; letter June 19, 1877, J. A. Williamson, Commissioner, to P. Schulze, Land Agent, requesting relinquishments to the United States of certain land; letters April 27, 1877, and April 30, 1877, of same tenor; letters August 10, 1877, and Aug. 10, 1877 same subject; letter Commissioner to Schulze, September 5, 1877, acknowledging receipt of deed; deed No. 152, Trustees to Waldrup; Sept. 6, 1877, Williamson to Register and Receiver, Oregon City, Jan. 28, 1878, Schulze to Commissioner; February 16, 1878, Williamson to Schulze, acknowledging relinquishment; relinquishment Trustees to United States; Aug. 4, 1881, N. C. McFarland, Commissioner, to Schulze, Aug. 25, 1881, Schulze to Commissioner, June 11, 1887, Geo. H. Andrews to Commissioner G. L. O. July 2 1877, Wm. A. J. Sparks, Commissioner, to Geo. H. Andrews; May 9, 1887, deeds O. & C. R. R. Co. to United States; Letter Oct. 21, 1887, A. C. Jones, Receiver at Roseburg, Oregon, to Commissioner G. L. O. October 19 1905, D. A. Chambers, Attorney O. & C. R. R. Co., to Commissioner of the General Land Office. J. H. Fimple, Acting Commissioner, to Chambers November 9, 1905. Deed Aug. 1, 1905, O. & C. R. R. Co. to United States; All in reference to lands erroneously patented.

Copy of this exhibit is as follows:

“M. L. 268839.

“B”

“M. F. H.

“DEPARTMENT OF THE INTERIOR
“GENERAL LAND OFFICE
“WASHINGTON

April 11, 1912.

“I hereby certify that the annexed copies of papers and
“letters, are true and literal exemplifications of the orig-
“inal papers, letters and press-copies of letters in this
“office.

“IN TESTIMONY WHEREOF I have hereunto
“subscribed my name and caused
“the seal of this office to be
(Seal) “affixed at the city of Washing-
“ton, on the day and year above
“written.

(Signed) H. W. Sawyer,
Recorder of the General Land Office.

“236

6:50 P. M.

“THE WESTERN UNION TELEGRAPH
COMPANY.

“Dated Portland, Oregon, June 20, 1876.

“Received at N. E. cor. 14th St. and Penn Ave.,

“Washington, D. C., 6:46 P. M.

“To Hom. Com'r. Gen'l Land Office,

“Washington.

“In reply to letter of third inst. have to state that

“delay in execution of relinquishment is caused by severe illness of one of our trustees, who has thus far been unable to sign deed. Hope to get the deed next week.

“Schulzer,

“Land Agt.

“O. & C. R. R.”

“F”.

T. C.

W. D. Jr.

“DEPARTMENT OF THE INTERIOR,

“GENERAL LAND OFFICE,

“Washington, D. C.

“July 14, 1876.

“P. Schulze, Esq.,

“Land Agt. Oregon & Cal. R. R. Co.,

“Portland, Oregon.

“Sir.

“I have to acknowledge the receipt of your letter of 28th ultimo, and seven accompanying ‘quit claim’ deeds executed the the 22nd ultimo, by the Oregon & California Rail Road Company in compliance with our letter of April 22d, 1873, for the following described tracts, inadvertently patented May 29th, 1872, to said Company.

| | | | |
|----------------|---------|---------|---------|
| “Lots 1, 2 & 3 | Sec. 5, | T 10 S. | R. 2 W. |
| “SE 1/4 | 13 | 18 | 2 |
| “S 1/2 SW 1/4 | 1 | 16 | 3 |

vs. The United States

7387

| | | | |
|--|---------|-------|--------|
| "W $\frac{1}{2}$ NE $\frac{1}{4}$ & lot 4, | 5 | 18 | 3 |
| "W $\frac{1}{2}$ NE $\frac{1}{4}$ & NW $\frac{1}{4}$ | 3 | 14 | 5 |
| "S $\frac{1}{2}$ SE $\frac{1}{4}$ | Sec. 29 | 14 S. | R 5 W. |
| "NW $\frac{1}{4}$ of SE $\frac{1}{4}$ | 25 | 16 | 6. |

"Very respectfully,

"J. A. Williamson,

"Commissioner."

"LAND DEPARTMENT

"OREGON and CALIFORNIA R. R. Co.

"Portland, Oregon, June 28th, 1876.

"To the Hon. Commissioner office

"General Land Office.

"Washington, D. C.

"Sir.

"I have the honor, herewith, to transmit to you quit
"claim deeds, numbered 146, 147, 148, 149, 150, 151 &
"153, for certain tracts which were inadvertently pat-
"ented to this company.

"I do not send a deed for Lots 2 & 3 Sec. 13 T. 3S
"R 3 East, as requested in your letter of March 13th,
"1874 because we have sold one of said tracts, not know-
"ing that they were covered by a Donation Entry. It
"will take some time before this matter can be straight-
"ened up.

"Please acknowledge the receipt of the above deeds.

“Very respectfully,

“P. Schulze,

“Land Agent O. & C. R. R.”

“WHEREAS: The lands hereinafter described, were
“heretofore Patented by the U. S. Government to the
“Oregon and California Railroad Company and em-
“braced in a certain Trust deed of said Company to us,
“dated the 15th day of April, 1870 and are part of the
“Donation land claim of Jeremiah Criss & Starke Dona-
“tion Certificate No. 4059 and as such excepted from
“the Grant to said Oregon and California Railroad
“Company, and

“WHEREAS: The Commissioner of the General
“Land Office has requested said Oregon and California
“Railroad Company to cause the same to be conveyed
“to said Jeremiah Criss and Starke, now, therefore, we

“MILTON S. LATHAM.

“FAXON D. ATHERTON and

“WILLIAM NORRIS, Trustees for and in
“consideration of the premises do grant, bargain, re-
lease, convey and quitclaim unto the said Jeremiah Criss
“& Starke and their legal representatives, the following
“described real estate, to wit:—The West half of the
“North East Quarter and The North West Quarter of
“Section Three (3) Township Fourteen South of Range
“Five (5) West, Willamette Meridian, situate in Ben-
“ton County, Oregon and containing Two hundred and

“and forty-three (243) and 18/100 acres—to have and
“to hold the said premises with all rights and appurten-
“ances thereunto belonging, unto the said Jeremiah
“Criss & Starke and their legal representatives forever.”

“In witness whereof we have hereunto set our hands
“and seals this twenty-second day of June, A. D. 1876.

“MILTON S. LATHAM (Seal)

“F. D. ATHERTON (Seal)

“WM. NORRIS. (Seal)

“IN PRESENCE OF

“. G. L. MURDOCK

“. S. O. PUTNAM.

“State of California,)
) ss.
“County of San Francisco.)

“Be it remembered that on this 22nd day of June,
“A. D. 1876, before me, a Commissioner of Deeds for
“the State of Oregon, residing at San Francisco, in the
“State of California, duly commissioned and sworn, per-
“sonally appeared the within named Milton S. Latham,
“Faxon D. Atherton and William Norris, personally
“known to me to be the persons described in and who
“executed the foregoing instrument, and severally
“acknowledged before me that they executed the same
“as such Trustees freely and voluntarily and for the
“uses and purposes therein set forth.

“In witness whereof, I have hereunto set my hand

“and affixed my official seal the day and year last above
“written.

“S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon.”

“WHEREAS; The lands hereinafter described,
“were heretofore Patented by the U. S. Government
“to the Oregon and California Railroad Company and
“embraced in a certain Deed of Trust of said Company
“to us, dated the 15th day of April 1870, and are part
“of the Donation land claim of Rogers Pepiot Donation
“Certificate No. 1734, and as such excepted from the
“Grant to said Oregon and California Railroad Com-
“pany, and Whereas; the Commissioner of the General
“Land Office has requested said Oregon and California
“Railroad Company to cause the same to be conveyed
“to said Rogers Pepiot. Now, therefore we,

“MILTON S. LATHAM,

“FAXON D. ATHERTON and

“WILLIAM NORRIS, Trustees, for and in
“consideration of the premises, do grant, bargain, re-
“lease, convey and quitclaim, unto the said Rogers Pep-
“iot and his legal representatives, the following described
“real estate, to wit:

“The South half of the South West Quarter of Sec-
“tion One (1) Township Sixteen (16) South of Range
“Three (3) West, Willamette Meridian, situate in Linn
“County, Oregon and containing Eighty (80) 00/100

“In witness whereof, I have hereunto set my hand

“and affixed my official seal, the day and year last above written.

S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon.

“WHEREAS; The lands herein after described,
“were heretofore Patented by the U. S. Government to
“the Oregon and California Railroad Company and em-
“braced in a certain Trust Deed of said Company to us,
“dated the 15th day of April, 1870, and are a part of
“the Donation land claim of Cornelius Hackshaw Dona-
“tion Certificate No. 1823, and as such excepted from
“the Grant to said Oregon and California Railroad Com-
“pany, and whereas: The Commissioner of the General
“Land Office has requested said Oregon and California
“Railroad Company to cause the same to be conveyed to
“said Cornelius Hackshaw, Now therefore we.

“MILTON S. LATHAM,

“FAXON D. ATHERTON and

“WILLIAM NORRIS, Trustees for and in
“consideration of the premises, do grant, bargain, re-
“lease, convey and quitclaim unto the said Cornelius
“Hackshaw and his legal representatives the following
“described real estate, to wit:

“The South East Quarter of Section Thirteen (13)
“Township Eighteen (18) South of Range Two (2)
“West. Willamette Meridian, situate in Linn County,

“Oregon and containing one hundred and sixty (100)
“00/100 Acres.

“To have and to hold the said premises with all the
“rights, and appurtenances thereunto belonging, unto
“the said Cornelius Hackshaw and his legal representa-
“tives forever.

“In witness whereof we have hereunto set out hands
“and seals this twenty-second day of June, A. D. 1876.

“MILTON S. LATHAM (Seal)

“F. D. ATHERTON (Seal)

“WM. NORRIS. (Seal)

“In presence of

“G. L. MURDOCK

“S. O. PUTNAM.

“State of California,)
) ss.
“County of San Francisco.)

“Be it remembered that on this 22nd day of June
“A. D. 1876, before me, a Commissioner of Deeds for
“the State of Oregon, residing in San Francisco in the
“State of California, duly commissioned and sworn, per-
“sonally appeared the within named.

“Milton S. Latham Faxon D. Atherton and Wil-
“liam Norris, personally known to me to be the persons
“described in and who executed the foregoing instru-
“ment, and severally acknowledged before me that they

“executed the same as such Trustees freely and voluntarily and for the uses and purposes therein set forth.

“IN WITNESS WHEREOF, I have hereunto
“set my hand and affixed my official seal, the day and
“year last above written.

“S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon.

“WHEREAS; The lands hereinafter designated
“were heretofore Patented by the U. S. Government to
“the Oregon and California Railroad Company and embraced in a certain Trust Deed of said Company to
“us dated the 15th day of April, 1870 and are part of
“the Donation land claim of Reuben Draper Donation
“Certificate No. 2611, and as such excepted from the
“Grant to said Oregon and California Railroad Company, and Whereas; The Commissioner of the General
“Land Office has requested said Oregon and California
“Railroad Company to cause the same to be conveyed
“to said Reuben Draper. Now therefore we,

“Milton S. Latham,

“Faxon D. Atherton and

“William Norris, Trustees for and in
“consideration of the premises, do grant, bargain, release, convey and quit claim unto the said Reuben
“Draper and his legal representatives the following described real estate to wit:

“The North West Quarter of the South East Quar-

“ter of Section Twenty-five (25), Township Sixteen
“(16) South Range Six (6) West. Willamette Meri-
“dian, situate in Lane County and containing Forty
“00/100 acres. . . . to have and to hold the said premises
“with all rights and appurtenances thereunto belonging
“unto the said Reuben Draper and his legal representa-
“tives forever.

“In witness whereof we have hereunto set our hands
“and seals this twenty-second day of June A. D. 1876.

“MILTON S. LATHAM (Seal)

“F. D. ATHERTON (Seal)

“WM. NORRIS. (Seal)

“In presence of

“G. L. MURDOCK

“S. O. PUTNAM.

“State of California,)
) ss.
“County of San Francisco.)

“Be it remembered that on this 22nd day of June
“A. D. 1876, before me a commissioner of Deeds for the
“State of Oregon, residing in San Francisco in the State
“of California, duly commissioned and sworn, personally
“appeared the within named.

“Milton S. Latham, Faxon D. Atherton and Wil-
“liam Norris, personally know to me to be the persons
“described in and who executed the same as such
“Trustees freely and voluntarily and for the uses and
“purposes therein set forth.

“In witness whereof, I have hereunto set my hand
“and affixed my official seal, the day and year last above
“written.

“S. O. PUTNAM, Commissioner
“of Deeds for the State of Oregon.”

“WHEREAS: The lands hereinafter described,
“were heretofore Patented by the U. S. Government to
“the Oregon and California Railroad Company and
“embraced in a certain Trust Deed of said Company to
“us, dated the 15th day of April, 1870, and are part of
“the Donation land claim of William L. Lucky Dona-
“tion certificate No. 1777, and as such excepted from
“the Grant to said Oregon and California Railroad
“Company, and whereas; The Commissioner of the Gen-
“eral Land Office has requested said Oregon and Cali-
“fornia Railroad Company to cause the same to be con-
“veyed to said William L. Lucky. Now therefore we

“Milton S. Latham,

“Faxon D. Atherton and

“William Norris, Trustees for and in
“consideration of the premises, do grant, bargain, re-
“lease, convey and quit claim, unto the said William L.
“Lucky and his legal representatives the following de-
“scribed real estate to wit:

“The west half of the North West Quarter of Lot
“number Four (4) of Section Five (5), Township

“Eighteen (18) South of Range Three (3) West Wil-
lamette Meridian, situate in Lane County, Oregon and
“containing one hundred and five 00/100 acres. . . . to
“have and to hold the said premises with all rights and
“appurtenances thereunto belonging unto the said Wil-
liam L. Lucky and his legal representatives forever.

“In witness whereof, we have hereunto set out hands
“and seals this twenty-second day of June A. D. 1876.

"MILTON S. LATHAM (Seal)

"F. D. ATHERTON (Seal)

“WM. NORRIS. (Seal)

“In presence of

"G. L. MURDOCK

"S. O. PUTNAM.

"State of California,)
) ss.

"County of San Francisco.)

“Be it remembered that on this 22nd day of June,
“1876, before me, a Commissioner of Deeds for the State
“of Oregon, residing at San Francisco, in the State of
“California, duly commissioned and sworn, personally
“appeared the within named.

“Milton S. Latham, Faxon D. Atherton and William Norris, personally known to me to be the persons described in and who executed the foregoing instrument and severally acknowledged before me that they executed the same as such Trustees freely and voluntarily and for the uses and purposes therein set forth.

“In witness whereof, I have hereunto set my hand
“and affixed my official seal the day and year last
“above written.

“S. O. PUTNAM, Commissioner,
of Deeds for the State of Oregon.”

“WHEREAS; The lands hereinafter described
“were hereinbefore Patented by the U. S. Government
“to the Oregon and California Railroad Company and
“embraced in a certain Trust Deed of said Company to
“us, dated the 15th day of April, 1870 and are part of
“the Donation land claim of George W. Caton, Dona-
“tion Certificate No. 1856, and as such excepted from
“the Grant to said Oregon and California Railroad Com-
“pany, and whereas; The Commissioner of the Gen-
“eral Land Office has requested said Oregon and Cali-
“fornia Railroad Company to cause the same to be con-
“veyed to said George W. Caton. Now therefore we,

“Milton S. Latham,

“Faxon D. Atherton, and

“William Norris, Trustees for and in
“consideration of the premises, do grant, bargain, re-
“lease, convey and quit claim unto the said George W.
“Caton and his legal representatives the following de-
“scribed real estate, to wit:

“The South half of the South East Quarter of Sec-
“tion Twenty-nine (29) Township Fourteen (14)
“South, of Range Five (5) West. Willamette Merid-

“ian, situate in Benton County, Oregon and containing
“Eighty (80) 00/100 acres. . . . to have and to hold the
“said premises with all rights and appurtenances there-
“unto belonging, unto the said George W. Caton and
“and his legal representatives forever.

“In witness whereof we have hereunto set our hands
“and seals this twenty-second day of June, A. D. 1876.

“MILTON S. LATHAM (Seal)

“F. D. ATHERTON (Seal)

“WM. NORRIS. (Seal)

“In presence of

“S. O. PUTNAM,

“G. L. MURDOCK

“State of California,)
) ss.
“County of San Francisco.)

“Be it remembered that on this twenty-second day
“of June, A. D. 1876, before me, a Commissioner of
“Deeds for the State of Oregon, residing in San Fran-
“cisco, in the State of California, duly commissioned and
“sworn, personally appeared the within:

“Milton S. Latham, Faxon D. Atherton and Wil-
“liam Norris, personally known to me to be the persons
“described in and who executed the foregoing instru-
“ment, and severally acknowledged before me that they
“executed the same as such Trustees freely and volun-
“tarily and for the uses and purposes therein set forth.

“In witness whereof, I have hereunto set my hand
“and affixed my official seal, the day and year last
“above written.

“S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon.”

“WHEREAS; the lands hereinafter described,
“were heretofore Patented by the U. S. Government to
“the Oregon and California Railroad Company and
“embraced in a certain Trust Deed of said Company
“to us, dated the 15th day of April, 1870, and are part
“of the Donation land claim of Henry H. King, Dona-
“tion Certificate No. 3975, and as such excepted from
“the Grant to said Oregon and California Railroad Com-
“pany, and whereas; The Commissioner of the General
“Land Office has requested said Oregon and California
“Railroad Company to cause the same to be conveyed
“to said Henry H. King. Now therefore we,

“Milton S. Latham,

“Faxon D. Atherton and

“William Norris, Trustees for and in
“consideration of the premises do grant, bargain, re-
“lease, convey and quit claim unto the said Henry K.
“King, and his legal representatives, the following de-
“scribed real estate, to wit:

“Lots Number One (1), Two (2) and Three (3)
“of Section Five (5), Township Ten (10) South of
“Range Two (2) West. Willamette Meridian, situate

“in Marion County, Oregon and containing Thirty-six
“(36) and 90/100 acres.....to have and to hold the
“said premises with all rights and appurtenances there-
“unto belonging, unto the said Henry H. King and
“his legal representatives forever.

“In witness whereof, we have hereunto set our hands
“and seals this Twenty-second day of June, A. D. 1876.

“MILTON S. LATHAM (Seal)

“F. D. ATHERTON (Seal)

“WM. NORRIS. (Seal)

“In presence of,

“G. L. MURDOCK

“S. O. PUTNAM.

“State of California,)
) ss.
“County of San Francisco.)

“Be it remembered that on this twenty-second day
“of June, A. D. 1876, before me, a Commissioner of
“Deeds for the State of Oregon, residing at San Fran-
“cisco, in the State of California, duly commissioned and
“sworn, personally appeared the within named.

“Milton S. Latham, Faxon D. Atherton & William
“Norris, personally known to me to be the persons de-
“scribed in and who executed the foregoing instrument,
“and severally acknowledged before me that they exe-
“cuted the same as such Trustees freely and voluntarily
“and for the uses and purposes therein set forth.

“In witness whereof, I have hereunto set my hand
“and affixed my official seal the day and year last above
written.

“S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon.”

“LAND DEPARTMENT

“OREGON AND CALIFORNIA R. R. CO.

“Portland, Oregon, July 9th, 1877.

“The Hon. Commissioner of the

“General Land Office.

“Washington, D. C.

“Sir:

“Referring to your letter of June 19th I beg to state
“that this company is going to furnish a quit claim deed
“for the tracts described in the said letter.

“There will, however, be some delay in the execution
“of the deed, owing to the protracted illness of one of
“the mortgage trustees who have to execute the deed.

“Very respectfully,

“P. SCHULZE.”

“ ‘F’

T. C.

W. D. Jr.

“DEPARTMENT OF THE INTERIOR,
“GENERAL LAND OFFICE,

“Washington, D. C.,

“June 19, 1877.

“P. Schulze, Esq.,

“Land Agt. Oregon & Cal. R. R. Co.,

“Portland, Oregon.

“Sir:

“In patent No. 1 issued May 9, 1871, to the Oregon
“and California Rail Road Company, the selection of
“SW $\frac{1}{4}$ sec. 7-Tp. 1 S., R. 4 E., 160.20/100 acres, is
“included, and is shown to be in conflict with donation
“certificate No. 4200 of Gilmer Kelly, issued June 25,
1873, alleging settlement May 14, 1854.

“Also in patent No. 2 issued July 12th, 1871, the
“selection of lot 5, sec. 29-Tp. 9 S., R. 3W. 58.80 acres
“is included, and is shown to be in conflict with donation
“certificate No 4432 of Willis Osborn, issued June 27,
“1874, alleging settlement August 1st, 1854.

“In order therefore to remove the cloud of title rest-
“ing upon said donation claims, I have to request your
“company to furnish a full relinquishment to the United
“States.

“Very respectfully,

“J. A. WILLIAMSON,

“Commissioner.”

“ ‘F’

T. C.

W. D. Jr.

“DEPARTMENT OF THE INTERIOR,

“GENERAL LAND OFFICE,

“Washington, D. C.,

“April 27, 1877.

“P. Schulze, Esq.,

“Land Agt. Oregon & Cal. R. R. Co.,

“Portland, Oregon.

“Sir:

“In patent No. 2, issued July 12th, 1871, to the
“Oregon and California Rail Road Company, the S $\frac{1}{2}$
“of NW $\frac{1}{4}$ of NW $\frac{1}{4}$, sec. 3-Tp. 6 S., R. 1W., 19.45/100
“acres, is in conflict with the donation claim of John
“W. Cleaver, certificate No. 4639, alleging settlement
“25th November, 1853.

“Therefore in order to remove the cloud of title rest-
“ing upon said Cleaver’s entry—I have to request your
“Company, to furnish a complete relinquishment of said
“tract to the United States as Railroad land.

“Very respectfully,

“J. A. WILLIAMSON,

“Commissioner.”

“ ‘F’

T. C.

W. D. Jr.

“DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C.,

April 30, 1877.

“P. Schulze, Esq.,

“Land Agt. Oregon & Cal R. R. Co.,

“Portland, Oregon.

“Sir:

“In patent no. 2, issued July 10th, 1871, to the Oregon and California Railroad Company, lots 1, 2, 3, & 4, sec. 31-Tp. 6 S. R 5 West, 68.44/100 acres, are in conflict with donation claim of Green B. Savery, certificate No. 4445, alleging settlement 25th November, 1853.

“Therefore in order to remove the cloud to title resting upon said Savery’s entry, I have to request your company to furnish a complete relinquishment of said lots to the United States.

“Very respectfully,

“J. A. WILLIAMSON,

“Commissioner.”

“LAND DEPARTMENT
“OREGON AND CALIFORNIA R. R. CO.

Portland, Oregon, August 10th, 1877.

“The Hon. Commissioner of the

“General Land Office.

“Washington, D. C.

“Sir:

“Your letters of April 27th and April 30th were mis-
“laid and therefore left unanswered, having just found
“them, I beg to state that quit claim deed to the United
“States for the tracts described in the said letters will
“be issued as soon as a mortgage trustee will have been
“appointed by the Court in place of F. D. Atherton,
“deceased.

“Very respectfully,

“P. SCHULZE,

“Land Agt. O. & C. R. R. Co.”

“LAND DEPARTMENT
“OREGON AND CALIFORNIA R. R. CO.

Portland, Oregon, August 10, 1877.

“The Hon. Commissioner of the

“General Land Office.

Washington, D. C.

“Sir:

"I have the honor to enclose herewith as quit claim
"deed for lots 2 and 3 of Sec. 13 T. 3 S. R. 3 E. contain-
"ing 40.21 acres to James Waldrup, the receipt of which
please acknowledge.

"I am, sir,

"Very respectfully,

yours

"P. SCHULZE,

"Land Agent."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C.,

"Sept. 5, 1877.

"P. Schulze, Esq.,

"Land Agent O. & Cal. R. R. Co.,

"Portland, Oregon.

"Sir:

"I have to acknowledge receipt of your letter of 10th
"ulto, and accompany quit claim deed for Lots No. 2
"and 3 of Sec. 13, Tp. 3 S. R. 3 E., 42.21/100 acres,
"made by the Oregon and California Rail Road Com-
"pany, June 22d, 1876, in accordance with our letter
"of March 13, 1873.

"Very respectfully,

"J. A. WILLIAMSON,

"Commissioner."

“WHEREAS; The lands hereinafter described,
“were heretofore Patented by the U. S. Government to
“the Oregon and California Railroad Company and em-
“braced in a certain Trust Deed of said Company to
“us, dated the 15th day of April, 1870 and are part
“of a donation land claim of James Waldrup, Donation
“Certificate No. 4325 and as such excepted from the
“Grant to said Oregon and California Railroad Com-
“pany, and whereas; the Commissioner of the General
“Land Office has requested said Oregon and California
“Railroad Company to cause the same to be conveyed
“to said Isaac Waldrup, Now therefore we,

“Milton S. Latham,

“Faxon D. Atherton and

“William Norris,

“Trustees for and in consideration of the premises do
“grant, bargain, release, convey and quit claim unto the
“said James Waldrup and his legal representa-
“tives, the following described real estate, to wit:

“Lots number Two (2), and Three (3) of Section
“Thirteen (13), Township Three (3) South of Range
“Three (3) East. Willamette Meridian, situate in
“Clackamas County, Oregon and containing Forty two
“(42) 21/100 acres—to have and to hold the said
“premises with all rights and appurtenances thereunto
“belonging unto the said James Waldrup and his legal
“representatives forever.

“In witness whereof, we have hereunto set out hands
“and seals this twenty-second day of June, 1876.

“MILTON S. LATHAM (Seal)

“F. D. ATHERTON (Seal)

“WM. NORRIS (Seal)

“In presence of

“G. L. MURDOCK

“S. O. PUTNAM.

“State of California,)
) ss.
“County of San Francisco.)

“Be it remembered that on this 22nd day of June
“A. D. 1876, before me, a Commissioner of Deeds for
“the State of Oregon, residing at San Francisco in the
“State of California, duly commissioned and sworn, per-
“sonally appeared before me, the within named.

“Milton S. Latham, Faxon D. Atherton and Wil-
“liam Norris, personally known to me to be the per-
“sons described in, and who executed the foregoing in-
“strument, and severally acknowledged before me that
“they executed the same as such Trustees freely and
“voluntarily, and for the uses and purposes therein set
“forth. In witness whereof, I have hereunto set my
“hand and affixed my official seal, the day and year last
“above written.

“S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon.”

“DEPARTMENT OF THE INTERIOR,
“GENERAL LAND OFFICE,

Washington, D. C.,

“Sept. 6, 1877.

“Register & Receiver,

“Oregon City, Oregon.

“Gentlemen:

“The selection of lots 2 & 3 of sec. 13-Tp. 3 S., R.
“3E.-42.21 acres, by the Oregon and California Rail-
“road Company, under the Acts of July 25, 1866, and
“June 25, 1868, and same patented May 9, 1871, I have
“now to state were duly relinquished by said Company,
“June 22d 1876, upon the showing that said selection was
“in direct conflict with the donation claim of James
“Waldrup, certificate No. 4325, issued Jany. 28, 1874.

“Please note on your records said relinquishment and
“refer to this as letter F.

“Very respectfully,

“J. A. WILLIAMSON,

“Commissioner.”

“LAND DEPARTMENT
“OREGON & CALIFORNIA R. R. CO.

“Portland, Oregon, Jan. 28th, 1878.

“The Hon. Commissioner of the

“General Land Office.

“Washington, D. C.

“Sir:

“Referring to your letters “F” dated April 27th,
“April 30th and June 19th, 1877 respectively I beg to
“enclose herewith our relinquishment to the following
“described land, to wit:

“S. W. 4 Sec. 7 T. 1 S. R. 4 E; Lot No. 5 of Sec
“29 T. 9 S. R. 3 W.; Lots 123 & 4 Sec. 31 T. 6 S. R.
“5 W.; & S. 2 of N. W. 4 of N. W. 4 Sec. 3 T. 6 S.
“R. 1 W.

“Please acknowledge receipt.

“Very respectfully,

“P. SCHULZE,

“Land Agt. O. & C. R. R. Co.”

“DEPARTMENT OF THE INTERIOR,
“GENERAL LAND OFFICE,

“Washington, D. C.,
February 16, 1878.

“P. Schulze, Esq.,

“Land Agt. O & Cal. R. R. Co.

“Portland, Oregon.

“Sir:

“I have to acknowledge the receipt of your letter of
“28th ultimo, and accompanying relinquishment of the
“Oregon and California Railroad Company, made the
“19th ulto, in accordance with my letters of April 27
“and 30th and June 19, 1877, for the following described
“tracts.

“SW $\frac{1}{4}$ sec. 7—Tp. 1 S. R.—4 E, 160.20 acres.

“S $\frac{1}{2}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$, sec. 3, Tp. 6, S. R. 1 W.
19.45 acres.

“Lots 1, 2, 3 & 4, sec. 31, Tp. 6, S. R. 5 W., 68.44
acres.

“Lot 5, sec. 29, Tp. 9, S. R. 3 W., 5080 acres.

“Very respectfully,

“J. A. WILLIAMSON,

“Commissioner.”

“WHEREAS; The hereinafter described tracts and
“parcels of Real Estate, are included in patents issued
“by the United States to the Oregon and California
“Railroad Company under Act of Congress of June
“25th, 1866 and

“WHEREAS; the same are parts of the land con-
“veyed by the said Oregon and California Railroad
“Company to Milton S. Latham, Faxon D. Atherton
“and William Norris, Trustees, by a certain Trust Deed,
“dated the 15th day of April, 1870, and

“WHEREAS; it appears that the said tracts of
“land are also embraced in certain Donation entries, and

“WHEREAS; The Commissioner of the General
“Land Office of the United States has requested a re-
“linquishment of the said tracts to the United States.

“Now therefore we, Milton S. Latham and William
“Norris as only surviving and acting Trustees of the
“Trust declared in the said Deed of Trust of the 15th
“day of April, 1870. (The said Faxon D. Atherton
“having died on the 18th day of July, 1877), in consid-
“eration of the premises, do hereby release and forever
“quitclaim, unto the United States and unto their suc-
“cessors and assigns the following described parcels and
“tracts of real estate, to wit:

“The S. W. $\frac{1}{4}$ of Sec. 7, Township 1 South of R.
“4 E. and Lot number 5 of Section 29 in T. 9 S. R. 3
“W. and Lots number 1, 2, 3 and 4 of Section 31, T.
“6 S. R. 5 W. and the South half of the N. W. $\frac{1}{4}$ of
“N. W. $\frac{1}{4}$ of Section 3 in T. 6 S. R. 1 W. Willamette
“Meridian.

"In witness whereof, we have hereunto set our hands
and seals this day of 1876.

“R. T. POLK ”MILTON S. LATHAM (Seal)
“S. O. PUTNAM. “WM. NORRIS (Seal)

“Be it remembered that on this 19th day of January, “1878, before me, a Commissioner of Deeds for the State “of Oregon, residing at San Francisco in the State of “California, duly commissioned and sworn, personally “appeared before me, the within named Milton S. “Latham and William Norris, personally known to me “to be the persons described in, and who executed “the foregoing instrument, and severally acknowledged “before me that they executed the same as such Trus- “tees freely and voluntarily, and for the uses and pur- “poses therein set forth.

“In witness whereof, I have hereunto set my hand
“and affixed my official seal the day and year last above
“written.

“San Francisco.

“S. O. PUTNAM,

Com'r. of Deeds for the State of Oregon.”

“DEPARTMENT OF THE INTERIOR,

“GENERAL LAND OFFICE,

Washington, D. C.,

“Aug. 4, 1881.

“P. Schulze, Esq.,

“Atty. Oregon and California R. R. Co.,

“Portland, Oregon.

“Sir:

“On May 29, 1872, there was patented (list No. 3)
“to the Oregon and California Railroad Company the
“NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T. 18 S., R. 4 W., Rose-
“burg land district, Oregon, This tract was erroneously
“included in the patent of that date, embracing other
“lands.

“The records show that said tract, since February
“1, 1853, has been covered by the donation claim. Noti-
“fication No. 2624 of Hollen Bailey and Elizabeth
“Bailey, his wife, made June 17, 1853, under act of Con-
“gress approved Sept. 27, 1850. January 5, 1880, do-
“nation certificate No. 2085, issued thereon.

“There can be no question that under said act of Congress said Bailey and wife, can claim title to said land as of the date of settlement, February, 1, 1853.

“The proofs show compliance with the law, and the land absolutely vested in said claimants prior to the act of July 25, 1866, granting lands to said railroad company (see case of *Hall vs. Russell*, 11 Otto, 503).

“The railroad company are requested to reconvey title in said land to the United states in order that when patent shall issue on the donation claim, there may be no cloud upon the title. Of course the company will be entitled to select other lands in lieu thereof according to the provisions of the second section of the act of July 25, 1866.

“An early reply is requested.

“Respectfully,

“N. C. M’FARLAND,

“Commissioner.”

“LAND DEPARTMENT,
“OREGON & CALIFORNIA R. R. CO.,

“Portland, Oregon, August 25th, 1881.

“in applying for land,
“describe it by section,
“township and range, in
“all correspondence relating
“to contracts always give
“number of contract.

P. SCHULZE,
Land Agent.

“The Hon. Commissioner of the General Land Office.
Washington, D. C.

“Sir:

“Referring to your letter “F” of 4th inst. I have
“the honor to advise you that this company will comply
“with your request to give a quit claim deed to the
“United States for the N. W. 4 of the N. W. 4 of Sec-
“tion 33, Township 18 South Range 4 West.

“There will be, however, some delay in the issuance
“of such deed as it will require some time to obtain the
“signatures of the mortgage trustees of this company.

“Very respectfully,

“PAUL SCHULZE,

“Land Agent of the Oregon and California R. R. Co.”

“OREGON & CALIFORNIA RAILROAD
COMPANY,

“R. Koehler, Receiver.

“Portland, Or. 11th June, 1887.

“The Hon.

“The Commissioner of the General Land Office,

“Washington, D. C.

“Dear Sir:

“Herewith I beg to hand you deed of this Company
“to the following pieces of land patented to the Com-
“pany by error as per request of your letters dated
“Jany. 12, 1885, F. 1609. January 31, 1885 and letter
“to Mr. Koehler dated April 25, 1877, viz.

“N . W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ Section 33 Tp. 18, S. R.
“4 West.

“N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$
“Section 29, Tp. 14 S. R. 1 East.

“S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ Section 29 Tp. 11 S R. 1
“East.

“The two first pieces included in patent dated May
“29, 1872 and the last in patent dated July 12, 1871.

“Please acknowledge receipt and oblige,

“Yours truly,

“GEO. H. ANDREWS,”

"Refer in reply to this initial. F.

S. S. M., M. P. D., CMW

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

Washington, D. C.,

"July 2, 1887.

"Geo. H. Andrews, Esq.,

"Portland, Oregon.

"Sir:

"As requested I hereby acknowledge the receipt of
"your letter of the 11th inst., and accompanying deed
"reconveying to the United States the NW $\frac{1}{4}$ NW $\frac{1}{4}$
"Sec. 33, Tp. 18 S., range 4 W.; the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and
"NE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 29, town. 14S, range 1 E., and
"SE $\frac{1}{4}$ NW $\frac{1}{4}$, sec. 29, town 11 s., range 1 E., Ore-
"gon. Said deed was executed by the Oregon and Cali-
"fornia Railroad Company for the purpose of remov-
"ing the cloud from the titles of Hollen Bailey and wife,
"James Huntsucker, and Cyrus Lundy under donation
"certificates 2085, 1958 and 5228, respectively.

"Very respectfully,

"WM. A. J. SPARKS,

"Commissioner."

“This indenture witnesseth, that whereas patents
“have been erroneously issued for the hereinafter de-
“scribed parcels of land, by the United States to the
“Oregon and California Railroad Company, of Port-
“land, Oregon, under the Act of Congress of July 25th,
“1866, granting lands to said Company to aid in the
“construction of its railroad and telegraph line therein
“mentioned; and whereas said Railroad Company has
“been requested by the Government to reconvey to it the
“said parcels of land:

“Now therefore, in consideration of the premises
“and of One Dollar to it paid, the receipt whereof is
“hereby acknowledged, the said Oregon and California
“Railroad Company doth hereby grant and convey, and
“the Farmers Loan and Trust Company, a corporation
“created and existing under the laws of the State of New
“York, being the Trustee or Mortgagee of said lands,
“so granted to said Railroad Company by said Act of
“Congress, doth hereby remise and release unto the
“United States, the northwest quarter of the northwest
“quarter of section thirty three, in Township eighteen
“South of Range four West, of the Willamette Merid-
“ian, and the northwest quarter of the southeast quar-
“ter, and the northeast quarter of the southwest quarter
“of section twenty-nine, in Township fourteen South of
“Range one East, of the Willamette Meridian, all in-
“cluded in patent issued to said Railroad Company May
“29th, 1872; and the southeast quarter of the northwest
“quarter of section twenty nine in Township eleven

“South of Range one East, of the Willamette Meridian,
“included in patent issued to said Railroad Company
“July 12th, 1871; all in the State of Oregon.

“To have and to hold the said tracts or parcels of
“land above described unto the United States in fee
“simple forever.

“And the said Oregon and California Railroad Com-
“pany doth certify unto the United States that said lands
“hereby reconveyed to the Government are free from all
“encumbrance done and suffered by said Railroad Com-
“pany, in any way, manner or form whatsoever.

“In witness whereof the said Oregon and California
“Railroad Company, and the said Farmers’ Loan and
“Trust Company, have caused these presents to be
“sealed with their respective seals and to be executed by
“their respective Presidents and Secretaries, on this 9th
“day of May A. D. 1887.

“M. S. CUNNINGHAM,)
“A. D. MARSHALL)
“Witnesses to the)
“execution hereof by)
“the O. & C. R. R. Co.)

THE OREGON AND CALIFORNIA RAIL-
ROAD COMPANY,

By GEO. H. ANDREWS,
“2nd Vice-President,

THE OREGON AND CALIFORNIA RAIL-
ROAD COMPANY,

By W. W. BRETHERTON,
Secretary.

"C. A. BOUTRELL.)
)
)
)
)
"Witnesses to the)
"execution hereof by the)
"F. L. & T. Co. ()
 "G. SEARLES.)

THE FARMER'S LOAN AND TRUST COM-
PANY.

By R. G. ROLSTON,
President.

THE FARMER'S LOAN AND TRUST COM-
PANY.

By WM. H. LEUPP,
Secretary.

"State of Oregon,)
) ss.
"County of Multnomah.)

"Be it remembered that on this 9th day of May A.
"D. 1877, before me, the undersigned, a Notary Public
"in and for the County of Multnomah and State of Ore-
"gon, duly commissioned and qualified, personally came

“George H. Andrews, 2nd Vice-President of the Oregon and California Railroad Company, and Walter W. Bretherton, Secretary of said Company, whose names are subscribed to the foregoing instrument as 2nd Vice-President and Secretary of the said Company, both personally known to me to be the said individuals named and described in, and who executed the said instrument, and they severally acknowledged to me that he, the said George H. Andrews, as 2nd Vice-President, and he, the said Walter W. Bretherton, as Secretary of the said The Oregon and California Railroad Company, executed the foregoing instrument as and for the act and deed of said Corporation, for the uses and purposes therein mentioned; and he the said Walter W. Bretherton, being by me duly sworn, did depose and say that he is the Secretary of the Oregon and California Railroad Company, and resides at Portland, Multnomah County, Oregon; that he is the legal custodian of, and is acquainted with and has in his possession, the corporate seal of said Company; and that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by him as Secretary of the said Company on the 9th day of May, A. D. 1887, by order of the Board of Directors of said Company, and that he signed his name thereto by the like order of the Board of Directors of said Company.

“In witness whereof I have hereunto set my hand and affixed my official seal the date first above written.

“F. E. EWAN,

(Seal) Notary Public in and for the State of Oregon.

“office in the City of New York, the date and year afore-
“said.

(Seal)

“G. SEARLS,

“Commissioner for the State of Oregon, in the State
“of New York.

“Pursuant to an order of the Circuit Court of the
“United States for the District of Oregon, bearing date
“February 9th, 1885, in the case of Lawrence Harrison
“et al. vs. the Oregon and California Railroad Company
“et al. of record in said Court and Cause; I do hereby
“approve the execution of the within deed as and upon
“the considerations and terms therein expressed.

“Witness my hand and seal this 8th, day of June,
“A. D. 1887.

R. KOEHLER,

Receiver.”

“UNITED STATES LAND OFFICE,

“Roseburg, Oregon, Oct. 21, 1887.

“Hon. Commissioner,

“General Land Office,

“Washington, D. C.

“Dear Sir:

“Referring to your letter “F” dated July 2, 1887,
“I herewith return to you the deed therein referred to,
“the same having been recorded in all the counties in

“which the land is situated, (Linn and Lane), and being returned to this office by the Register and Receiver of Oregon City Land Office.

“Very respectfully,

“A. C. JONES,

“Receiver.”

“DEPARTMENT OF THE INTERIOR,

“GENERAL LAND OFFICE,

“Washington, D. C. June——, 1887.

“I, Wm. A. J. Sparks, Commissioner of the General Land Office, hereby certify that the annexed copy of a deed executed by the Oregon and California Railroad Company and the Farmer’s Loan and Trust Company, a corporation existing under the laws of the State of New York, on the 9th day of May, 1887, and reconveying to the United States, the $\frac{1}{4}$ N. W. $\frac{1}{4}$ Sec. 33, town. 18 S 1, range 4 W 1, and the N. W. S. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$ Sec. 29, town. 14 S range 1 E., Roseburg district; and the S. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$ section town 11 S. Range 1 E., Oregon City district, all in the State of Oregon, is a true and literal exemplification from the files of this office.

“IN WITNESS WHEREOF I have hereunto (Seal) “subscribed my name, and caused the Seal of “this Office to be affixed, at the City of Washington, on the day and year above written.

“WM. A. J. SPARKS,

“Commissioner of General Land Office.”

“THIS INDENTURE WITNESSETH, that
“whereas patents have been erroneously issued for the
“hereinafter described parcels of land by the United
“States to the Oregon and California Railroad Com-
“pany, of Portland, Oregon, under the Act of Congress
“of July 25th, 1866, granting lands to said Company
“to aid in the construction of its railroad and telegraph
“line therein mentioned; and whereas said Railroad
“Company has been requested by the Government to re-
“convey to it the said parcels of land:

“Now therefore, in consideration of the premises and
“of One Dollar to it paid, the receipt whereof is hereby
“acknowledged, the said Oregon and California Rail-
“road Company doth hereby grant and convey, and the
“Farmer’s Loan and Trust Company, a corporation
“created and existing under the laws of the State of New
“York, being the Trustee or Mortgage of said lands, so
“granted to said Railroad Company, by said Act of Con-
“gress, doth hereby remise and release unto the United
“States, the northwest quarter of the northwest quarter
“of section thirty-three, in township eighteen South of
“Range Four West, of the Willamette Meridian, and
“the northwest quarter of the southeast quarter, and the
“northeast quarter of the southwest quarter of section
“twenty-nine, in Township fourteen South of Range one
“East, of the Willamette Meridian, all included in pat-
“ent issued to said Railroad Company May 29th, 1872;
“and the southeast quarter of the northwest quarter of
“section in Township eleven South of Range one East
“of the Willamette Meridian included in patent issued to

“said Railroad Company June 12, 1871; all in the State
“of Oregon.

“To have and to hold the said tracts or parcels of
“land above described unto the United States in fee
“simple forever.

“And the said Oregon and California Railroad Com-
“pany doth certify unto the United States that said lands
“hereby reconveyed to the Government are free from all
“encumbrance done or suffered by said Railroad Com-
“pany, in any way, manner or form whatsoever.

“In witness whereof the said Oregon and California
“Railroad company, and the said Farmer’s Loan and
“Trust Company, have caused these presents to be sealed
“with their respective seals and to be executed by their
“respective Presidents and Secretaries, on this 9th day
“of May A. D. 1887.

“M. T. CUNNINGHAM.)

“A. D. MARSHALL.)

“Witness to the)

“execution hereof

“by the O. & C.)

“R. R. Co.)

(Seal)

THE OREGON AND CALIFORNIA RAIL-
ROAD COMPANY,

By GEO. H. ANDREWS,

2nd Vice-President.

THE OREGON AND CALIFORNIA RAIL-
ROAD COMPANY.

By W. W. BRETHERTON,
Secretary.

"H. A. BAUTELLER,)
 "Witnesses of the)
 "execution hereof by the)
 "F. L. & T. Co.)
 "G. A. SEARLS.)

THE FARMER'S LOAN AND TRUST
COMPANY.

By R. G. ROLSTON,
President.

THE FARMER'S LOAN AND TRUST
COMPANY.

By WM. H. LEUPP,
Secretary."

“State of Oregon,)
) ss.
“County of Multnomah.)

“Be it remembered that on this 9th day of May, A.
“D. 1887, before me, the undersigned, a notary public
“in and for the County of Multnomah, and State of
“Oregon, duly commissioned and qualified, personally
“came George H. Andrews, 2d Vice President of the
“Oregon and California Railroad Company, and Wal-
“ter W. Bretherton, Secretary of said Company, whose

“names are subscribed to the foregoing instrument as
“2d Vice President and Secretary of said Company,
“both personally known to me to be the said individuals
“named and described in, and who executed the said
“instrument, and they severally acknowledged to me that
“he, the said George H. Andrews as 2nd Vice Presi-
“dent, and he, the said Walter H. Bretherton, as Sec-
“retary of the said Oregon and California Railroad
“Company, executed the foregoing instrument as and
“for the Act and deed of said Corporation, for the uses
“and purposes therein mentioned, and he the said Wal-
“ter H. Bretherton, being by me duly sworn, did de-
“pose and say that he is the Secretary of the Oregon
“and California Railroad Company, and resides at Port-
“land, Multnomah County, Oregon; that he is the legal
“custodian of, and is acquainted with and has in his
“possession, the corporate Seal of said Company; that
“the seal affixed to the foregoing instrument is such
“corporate seal; that the same was so affixed by him
“as Secretary of said Company on the 9th day of May
“A. D. 1887, by order of the Board of Directors of said
“Company, and that he signed his name thereto by the
“like order of the Board of Directors of said Company.

“In witness whereof I have hereunto set my hand
“and affixed my official seal the date first above writ-
“ten.

(Seal)

“F. G. EWAN,

“Notary Public in and for the State of Oregon.

“State of New York,)
) ss.
“City and County of New York.)

“Be it remembered that on this first day of June
“A. D., 1887, before me, a Commissioner of the State
“of Oregon in the State of New York, residing in said
“City of New York, personally came Rosewell G. Rol-
“ston, President of the Farmer’s Loan and Trust Com-
“pany, the corporation described in the foregoing in-
“strument, and who is personally known to me; and he
“being by me duly sworn, did depose and say that he is,
“and at the time of the execution of said instrument was,
“the President, and that William H. Leupp is, and then
“was, the Secretary of said Company; that he knows
“the corporate seal of said Company, and that the seal
“affixed to the foregoing instrument as such is said cor-
“porate seal; that the said seal was so affixed by au-
“thority of the Board of Directors of said Company; and
“that the, Rosewell G. Ralston, as President, aforesaid,
“signed, and the said William H. Leupp as Secretary
“aforesaid, attested the said instrument by like author-
“ity.

“And the said Rosewell G. Ralston, President as
“aforesaid, acknowledged the execution of said instru-
“ment as the Act and deed of the said The Farmer’s
“Loan and Trust Company, for the uses and purposes
“therein expressed.

"In witness whereof, I have hereunto subscribed my
"name and affixed my official seal, at my office in the

“said City of New York, the day and year aforesaid.

(Seal)

“G. A. SEARLS,

“Commissioner for the State of Oregon, in the State
“of New York.

“Pursuant to an order of the Circuit Court of the
“United States for the District of Oregon, bearing date
“February 9th, 1885, in the case of Lawrence Harrison
“et al. vs. the Oregon and California Railroad Company
“et al. of record in said Court and Cause; I do hereby
“approve the execution of the within deed as and upon
“the consideration and terms therein expressed.

“Witness my hand and seal this 8th day of June
“A. D. 1887.

“R. KOEHLER, Receiver.”

“Reconveyance to the United States of the E/2
“SW/4 and NW/4 SW/4 Sec. 23, T. 20 S., R. 1. E.,
“Oregon.

October 19, 1905,

“The Honorable

“Commissioner of the

“General Land Office.

“Sir:

“Referring to your letter (1904-222494) to me of
“February 6, 1905, I now enclose herewith Deed No.
“88-B, dated August 1, 1905, executed by the Oregon

"& California R. R. Co., by J. P. O'Brien, Vice President, and W. W. Cotton, Secretary, and by the Union Trust Company of New York, by A. W. Kelley, Vice President, and E. R. Merritt, Assistant Secretary, relinquishing and reconveying the tracts named in the caption to the United States.

"Please acknowledge receipt of this deed.

"Very respectfully,

"D. A. CHAMBERS,

"Attorney Or. & Cal. R. R. Co."

"DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C.,

November 9, 1905.

"Address only the

"Commissioner of the General

"Land Office.

"Mr. D. A. Chambers,

"Atty. for O & C. R. R. Co.,

McGille Building, Washington, D. C.

"Sir:

"I have to acknowledge the receipt of your letter of October 19, 1905, submitting in response to the request of this office of February 6, 1905, a deed executed by the Oregon and California Railroad Company Au-

“gust 1, 1905, reconveying to the United States the E $\frac{1}{2}$
“SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 23, T. 20 S., R. 1 E.,
“Oregon.

“Very respectfully,

“J. H. FIMPLE,

“Acting Commissioner.”

“Deed No. 88-B

“This Indenture made on August 1st, 1905, by the
“Oregon and California Railroad Company, a corpora-
“tion of the State of Oregon, and the Union Trust
“Company of New York, a corporation of the State of
“New York, first parties, and the United States of
“America, second party, Witnesseth: That

“Whereas, the patent bearing date June 14th 1904,
“the United States of America, through inadvertence
“and mistake, conveyed unto the said Oregon and Cali-
“fornia Railroad Company the apparent legal title to
“the East half of South West quarter (E $\frac{1}{2}$ of SW $\frac{1}{4}$)
“and North West quarter of South West quarter
“(NW $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section Twenty-three (23), in
“Township Twenty (20) South, Range one (1) East,
“Willamette Meridian, County of Lane, State of Ore-
“gon: And

“Whereas, the legal title to the said lands was there-
“tofore granted by Act of Congress entitled “An Act
“granting lands to the State of Oregon, to aid in the

“construction of a military road from Eugene City to
“the eastern boundary of said State,” approved July
“2nd, 1864:

“Now, therefore, in consideration of the premises,
“the above-named first parties hereby relinquish and re-
“convey the said lands unto the above-named second
“party,

“To have and to hold unto the second party, and
“assigns, forever.

“In Witness Whereof, the said first parties have
“caused these presents to be sealed with their respective
“seals, and executed by their respective Presidents and
“Secretaries, the day and year first above written.

In Presence of)
“Hortense Whittaker)
“James G. Wilson.)

THE OREGON AND
CALIFORNIA RAIL-
ROAD COMPANY,

as to

J. P. O'Brien

and

W. W. Cotton.

By J. P. O'Brien,

Vice-President.

THE OREGON AND CALIFORNIA RAIL-
ROAD COMPANY,

By W. W. COTTON,
Secretary.

THE UNION TRUST COMPANY OF NEW
YORK,

By A. W. KELLY,
Vice-President.

THE UNION TRUST COMPANY OF NEW
YORK,

"J. A. Shaughnessy

"W. H. Spaulding.

By E. R. MERRITT,

Asst. Secretary."

"State of Oregon,)
) ss.
"County of Multnomah.)

"Be it Remembered, That on this 15th day of Au-
gust A. D. 1905, before me, the undersigned, a Notary
Public in and for the said County of State, duly com-
missioned and qualified, personally came J. P. O'Brien,
Vice-President of the Oregon and California Railroad
Company, and W. W. Cotton, Secretary of said Com-
pany, whose names are subscribed to the foregoing in-
strument as Vice-President and Secretary of said Com-
pany, both personally known to me to be the said in-

“dividuals named and described in, and who executed
“the said instrument, and they severally acknowledged
“to me that he, the said

“J. P. O’Brien, as Vice-President and he, the said

“W. W. Cotton, as Secretary of the said

“The Oregon and California Railroad Company, ex-
“ecuted the foregoing instrument as and for the act and
“deed of said Corporation, for the uses and purposes
“therein mentioned; and he, the said

“W. W. Cotton, being by me duly sworn, did depose
“and say that he is the Secretary of the Oregon and Cali-
“fornia Railroad Company, and resides at Portland,
“Multnomah County, Oregon; that he is the legal cus-
“todian of, and is acquainted with, and has in his pos-
“session, the corporate seal of said Company; that the
“seal affixed to the foregoing instrument as the seal of
“said Company is such corporate seal; and that the same
“was so affixed by him as Secretary of said Company
“on the 15th day of August A. D. 1905, by order of the
“Board of Directors of said Company, and that he
“signed his name thereto by the like order of the Board
“of Directors of said Company.

“In Witness Whereof, I have hereunto set my hand
“and affixed my official seal the day and year in this
“certificate first above written.

“JAMES G. WILSON,

“Notary Public for Oregon.

“the said City of New York, the day and year in this
“certificate first above written.

“PETER PALMER,

“Commissioner for the State of Oregon, in the State
“of New York.”

DEFENDANTS' EXHIBIT 376

consists of certified copies: letter, July 17, 1868, O. H. Browning, Secretary of the Interior, to A. M. Loryea, in regard to filing assent; May 5, 1871, Walter H. Smith, Assistant Attorney General, to C. Delano, Secretary expressing opinion as to validity of assignment by the Oregon Central Railroad Company to the Oregon & California Railroad Company, and that patents should be issued to the O. & C. R. R. Co.; May 8, 1871, C. Delano, Secretary, to A. T. Akerman, Attorney General, in reference to claims of W. E. Chandler; July 16, 1868, A. M. Loryea to O. H. Browning, Secretary of the Interior, advising that Gaston's organization is illegal; April 30, 1868, resolution of acceptance of grant by Oregon Central Railroad Company April 29, 1868, certified by S. A. Clarke, Secretary O. C. R. R. Co.; May 9, 1871, A. T. Akerman, Attorney General, to C. Delano, Secretary of the Interior, in answer to letter May 8, 1871, above.

Copy of this exhibit is as follows:

DEPARTMENT OF THE INTERIOR,

"UNITED STATES OF AMERICA.

Washington, D. C. March 16, 1912.

"PURSUANT to Section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals as they appear on the records and files of the Department.

"IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

(Seal)

CANNIE A. THOMPSON,

"Assistant Secretary of the Interior."

"DEPARTMENT OF THE INTERIOR.

"Washington, D. C., July 17, 1868.

"Sir:

"I have received your letter of the 16th instant and accompanying paper, purporting to be an acceptance by the Oregon Central Railroad Company of the grant made by the Act of July 25, 1866.

"By law the Company was required to file an 'as-sent' to its terms and conditions, within one year. That time expired July 25, 1867, and this paper, if sufficient for that purpose, could not now be received.

"I state for your information that J. Gaston, Presi-

“dent of the Oregon Central Railroad Company, with-
“in the time prescribed in that act filed an assent which
“was received.

“In compliance with your request I inclose a copy
“of my letter of the 8th instant to Mr. Gaston in regard
“to maps to be filed in this Department.

“Very respectfully,

“Your obt. servant,

“O. H. BROWNING,

“Secretary.”

“A. M. Loryea, Esq.,

“Present.”

OFFICE OF ASSISTANT ATTORNEY-
GENERAL.

“Washington, May 5th, 1871.

“Sir:

“I have considered the subject matter of the letter
“of W. E. Chandler, Esq. dated May 3d, 1871, upon
“which you desire my opinion.

“This letter relates to the validity of an assignment
“made by the Oregon Central Railroad Company to the
“Oregon and California Railroad Company, and re-
“quests that the question be referred to the Hon. Attor-
“ney-General for his opinion and that in the mean time
“the issuing of any patents to the said Oregon and Cali-
“fornia Railroad be suspended.

“To understand the matter properly it will be necessary to refer to the provisions of the Act of Congress granting lands in controversy, and to the action already had in your Department.

“Congress July 25, 1866, passed ‘an Act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad in California, to Portland in Oregon.’

“By the 1st section it is provided that the California & Oregon Railroad Company, organized under an act of the State of California and ‘such Company organized under the laws of Oregon as the Legislature of said State shall hereafter designate’ should be empowered to build a railroad and telegraph line between the City of Portland in Oregon and the Central Pacific Railroad in California, each of said roads to construct that portion of the railroad and telegraph lying within the limits of their respective States.

“The second section ‘granting to the said companies their *successors* and *assigns*, for the purpose of aiding in the construction of said railroad and telegraph line . . . every alternate section of public land, not mineral designated by odd numbers, to the amount of twenty alternate sections on each side per mile’ of said road, with the usual reservations.

“Section 4, provided that whenever ‘said Companies or either of them’ should have completed twenty or more consecutive miles; commissioners should be ap-

“pointed by the President to examine and report to him
 “and if it were found the road and telegraph had been
 “completed and equipped in all respects as required by
 “said act, it directed that ‘thereupon patents shall issue
 “to said Companies or either of them, as the case may be,
 “for the lands hereinafter granted to the extent of and
 “coterminous with the completed section of said rail-
 “road and telegraph line.

“Section 5, declared that the grants were ‘made upon
 “the condition that the said Companies shall keep said
 “Railroad and Telegraph line in repair and use and
 “shall at all time transport the mails upon said railroad
 “and transmit dispatches by said telegraph line for the
 “Government of the United States, when required so
 “to do by any departments thereof, and that the Gov-
 “ernment shall at all times have the preference in the
 “use of said railroad and telegraph therefore at fair and
 “reasonable rates.

“Other Sections provided that ‘said Companies’
 “should file their assent to the Act in the Department
 “of the Interior within one year, and should complete
 “one Section of twenty miles within two years, and
 “should use the said railroad and telegraph as one con-
 “tinuous line.

“Section nine provided that ‘whenever the word
 ‘Company or Companies’ is used in this Act it shall be
 “construed to embrace the words their associates, suc-
 “cessors, and *assigns, the same as if the words had been*
 “*inserted or thereto annexed.*’

“That is to say, in construing this act, whenever the
“word ‘company or companies’ is used, it is to be read
“and construed just as it would be if the words ‘as-
“sociates, successors and assigns’ immediately followed
“said words.

“The Legislature of Oregon designated The Oregon
“Central Railroad as the one authorized to construct
“the Portland road.

“The Oregon Central constructed the first section
“of twenty miles of its road and the President on the
“29th day of January 1870, ordered the patents for that
“portion to be issued.

“On the 28th of April 1870, the Secretary of the
“Oregon Central, filed in the Department of the In-
“terior, an assignment by that Company of all its rights
“and interests to the Oregon and California Railroad
“Company, and thereupon Secretary Cox recognized
“the said last named Company as the one entitled to the
“grant given to its assignor, and gave a certificate to
“that effect upon the faith of which the road has been
“able to negotiate a large amount of its bonds, secured
“by a mortgage upon the lands assigned.

“The Oregon and California Company have com-
“pleted three additional sections, each twenty miles, of
“the road leading from the City of Portland to the Cen-
“tral Pacific in California. Commissioners have re-
“ported favorably thereon and the President has di-
“rected the patents to issue, and the question now is,
“shall the patents issue or be delayed by reason of any-

“thing alleged in the communication of Mr. Chandler.

“He argues 1st that the Congressional land grant “was a personal trust vested in this Oregon Central “Railroad Company for the public purpose of aiding in “the construction of an important railroad line and could “not legally be sold or transferred to another railroad “company without the consent of Congress.

“I agree with him in the opinions that this grant “could not be assigned to another company without the “consent of Congress, but I disagree with him upon the “question whether the consent of Congress has not al- “ready been given as I construe the Act of July 25th, “1866, Congress has given such consent. Throughout “the entire act it has shown an intent to deal with the “assignee of the Oregon Central as well as with that “road itself.

“Bearing in mind that the word ‘company’ signifies “by express Statutory definition ‘assigns’ as well as com- “pany, and this act reads there is granted to said com- “pany and *its assigns*—whenever said company and *its assigns* have completed twenty miles—patents shall is- “sue to said company and its assigns,—this grant is upon “condition that said companies and *their assigns* shall “keep said railroad and telegraph in repair—said com- “panies and *their assigns* shall file their assent in the De- “partment of the Interior within one year and complete “one section of twenty miles within two years.

“If Congress did not intend to deal with assigns, “why was it so particular to engraft this word assigns

“into this Act in so many different places, and in fact
“in every place where the company is referred to? It
“is a very familiar rule in the interpretation of Statutes
“that effect shall be given to every word employed un-
“less it is plainly against the spirit of the act.

“In my opinion no effect can be given to the word
“‘*assigns*’ as thus used unless it implies that there may be
“a lawful assignee.

“There is no danger of loss to the Government from
“such a construction. The lands cannot be claimed until
“the road has been actually built. As fast as every sec-
“tion of twenty miles is built, some corporation is en-
“titled to the lands, what difference does it make to the
“United States what Company that is? If it be said
“that special confidence may be reposed in one set of
“men representing a railroad corporation; then I an-
“swer that such confidence may be defeated on the very
“next day by a lawful and perfectly legitimate transfer
“of Stock to an entirely different set of men, and the
“Government cannot present it. Is there any more
“danger to be apprehended from a change of roads than
“there is from an entire change of the persons who own
“and control them?

“A question identical in substance with the one now
“under consideration, was decided by Attorney General
“Stanberry as early as July 25th, 1866.

“The 15th Section of the Pacific Railroad Act of
“1862 (12th Stat. 496) provided that ‘whenever the
“word company is used in this Act, it shall be construed

“to embrace the words their associates, successors and
“*assigns*, the same as if the words had been properly
“added thereto.”

“The Hannibal and St. Joseph Railroad (one of the
“companies named in said act), made an assignment of
“its land grant and rights to the Atchison and Pike’
“Peak Railroad, and the last named road, by virtue of
“the assignment asked that the U. S. Bonds should be
“issued to it. The Attorney General decided that the
“assignment was valid and that the bonds should be is-
“sued to the Assignee, which was done.

“2d. Mr. Chandler argues that there is no essential
“difference between the assignment of the Oregon and
“California Railroad and the one to the Willamette Val-
“ley Railroad, which latter Attorney General Akerman
“in his opinion of February 20th, 1871, held to be in-
“valid.

“I think there is a great difference. In that act the
“words ‘successors and assigns’ were only once used and
“that in the first section (See Act of May 4th, 1870)
“which contained the grant of right of way and lands.
“In all the subsequence sections which provided what
“the company should do, and what liabilities it should
“incur the word ‘assigns’ was not used—I can well un-
“derstand why it was that the words were construed
“simply as words of limitation.

“There was nothing else in the Act that indicated
“that Congress was dealing with or intended to deal
“with any other company than the one named in the
“Act.

“But it is not so in this case as I have already attempted to show.

“In the assignment in that case, there was no assumption by the assignee of the liabilities of the assignor. In this there is.

“3d. Mr. Chandler claims that the Secretary of the Interior has no power to render a void assignment valid by recognizing it and issuing patents under it.

“In this I agree with him fully and I have referred to such recognition simply as an authority, showing how the learned and accomplished lawyers, who have officially acted upon this matter have considered it.

“The only remaining subject of Mr. Chandler’s communication relates to a suit in equity in the Supreme Court of the District of Columbia wherein James P. Flint and others are complainants and Ben Holladay and the Oregon and California Railroad Company are respondents. The complainants allege that they are the owners of a large amount of stock in the Oregon Central Railroad Company—that said company has already built a considerable portion of the road and telegraph from Portland to the Southern boundary of Oregon and by reason thereof is entitled to patents from the United States for a large amount of land—that the respondent Holloday has entered into a combination to defraud the complainants and for that purpose has organized the Oregon and California Railroad Company and procured the assignment to it from the Oregon Central of all its right property and

“franchises and has caused a mortgage to be executed
“by the Oregon and California Company upon the lands
“so assigned to secure the payment of bonds which he
“has negotiated and the proceeds of which he holds—
“that this was in fraud of complainants rights.

“The prayer of the bill is that the organization of
“the Oregon and California Company and the said trans-
“fer to it may be declared to be null and void—that said
“last named Company may be declared to hold said
“property, so assigned, in trust for the benefit of com-
“plainants—that an account may be taken and the
“amount due to complainants ordered to be paid to
“them—that a receiver may be appointed to take pos-
“session of the property and that, *pendente lite*, the re-
“spondents may be enjoined from receiving any patents
“from said lands.

“This bill was filed May 2d, 1871, and on that day
“one of the Judges of the Supreme Court of the District
“granted an injunction upon condition that complain-
“ants should give bonds in the sum of ten thousand dol-
“lars. It does not appear that any bond has been given.
“It does appear from the statements of Mr. Chandler’s
“communication that no service has been made or is like-
“ly to be made upon either of the respondents. The
“Oregon and California Railroad Company is a cor-
“poration created by the laws of Oregon, and I do not
“well see how the Supreme Court in this District is to
“get jurisdiction over it.

“But suppose it should, is it the duty of a public of-

“ficer, to delay the execution of any official duty, until
“one of the contending parties can be heard in the civil
“courts? If so how long must he wait? Shall it be until
“the case is heard in the court of original jurisdiction or
“in that of last record? I think neither. In my opinion
“the adoption of such a rule would be against public
“policy, and would greatly impede the due prosecution
“of public business.

“I advise the rejection of the request to delay. I am
“decidedly of opinion that the patents should be issued
“to the Oregon and California Railroad Company.

“If I were in doubt, upon this point I shall still ad-
“vise as I have done, in view of the former action of
“your Department sanctioned by Secretary Cox and
“Attorney General Stanberry and in view of the large
“pecuniary interest, that have arisen upon the faith of
“that action.

“Very respectfully,

“WALTER H. SMITH,

“Asst. Atty. General.

“HON. C. DELANO,

Secretary of the Interior.”

“DEPARTMENT OF THE INTERIOR.

Washington, D. C.,

May 8th, 1871.

“Dear Sir:

“After your opinion was given against the validity
“of the assignment or transfer of the Oregon Central
“Railroad Company of Oregon to the Willamette Val-
“ley Railroad of the same State, I conferred with you in
“regard to the case of the Oregon and California Rail-
“road, which latter Co. claimed a land grant as assignee
“of the Oregon Central Railroad.

“We then considered pretty fully the *difference* in
“the acts of Congress granting lands in each three cases,
“and referred particularly to the fact that, in the last
“case, the right to assign is expressly or impliedly rec-
“ognized throughout the entire act, and to the additional
“fact that my immediate predecessor, Secretary Cox,
“had received and accepted the assignment as valid, had
“given a certificate under the official seal to that effect,
“which certificate had been used to negotiate a large
“amount (several millions) of bonds secured by mort-
“gage on the road; and also this this company had com-
“pleted about sixty miles of road since the assignment,
“twenty miles having been previously completed.

“Under these circumstances it seemed clear to each
“of us, if I remember correctly, that the assignment in
“this case should be sustained, especially as Secretary
“Cox had so held, and as by such action on his part, large

“investments had been made by the public in the bonds
“of the Oregon and California Company, secured by
“mortgage on its road and lands.

“I accordingly announced my decision to the parties
“interested, and therein accrptrf certain sections of the
“road which had been completed since the recognition,
“by Secretary Cox, of the assignment.

“After this decision, the attorneys opposed to the as-
“signment, W. E. Chandler and Hon. B. F. Butler de-
“sired me to review the question, and in the meantime
“to withhold the issuing of patents to the road. I did
“so, and submitted the case, for advice, to Hon. W. H.
“Smith, Asst. Atty. General.

“He concurred fully in the previous action of the
“Department, and afterwards furnished me with his
“opinion in writing.

“However, before announcing to the Counsel a sec-
“ond decision, I again referred to the subject with you
“while at Cabinet meeting. I informed you that the
“parties desired me to refer the question to you, and
“knowing the pressure upon your time, I desired to
“know whether you deemed it advisable to have this case
“formally referred for your consideration.

“I understood you to advise against it, and also ad-
“vise that I follow the rulings of the Department made
“by Secretary Cox. This being in accord with my own
“deliberate judgment, I acted accordingly, and so in-
“formed Counsel for the parties.

“The result has been that W. E. Chandler has sent
“to the President an extraordinary letter, complaining,
“among other things that I did not consult you on the
“subject, and that I have overruled your opinion in a
“like case.

“I have concluded, therefore, to ask you to read Mr.
“Chandler’s letter, herewith inclosed, and to give me
“briefly (to be laid before the President) your recol-
“lection in regard to the matters herein referred to. I
“also submit the opinion of the Assistant Atty. General,
“Mr. Smith, upon the legal questions involved in the
“whole case, which opinion I wish you to examine, and
“upon which I wish your opinion, that I may also sub-
“mit it to the President.

“I regret to ask this favor, because I know the bur-
“den you official duties impose.

“Very respectfully,

“Your Ob’t. Servant,

“C. DELANO,

“Secretary.

“HON. A. T. AKERMAN,

“Attorney General,

“Washington, D. C.”

“Washington, July 16th, 1869.

“Hon. O. H. Browning,

“Sec’y. of the Interior.

“Sir:

“I desire to notify you that the Oregon Central Railroad of which J. Gaston represents himself as President, is an illegal organization. The organization of the same name of which I. R. Moores is President and myself Vice President was made in conformity to the laws of the State of Oregon. In connection herewith I desire to call your attention to the enclosed paper and ask that it may be filed as an acceptance of the lands granted by Congress for such purpose.

“Very respectfully,

“Your Obedient Serv’t,

“A. M. LORYEA,”

“Office of the

“OREGON CENTRAL RAILROAD
COMPANY,

“Salem, April 30, 1868.

“This is to certify that at a regular meeting of the Board of Directors of the Oregon Central Railroad Company, held at the office of the Company, Salem, April 29th A. D. 1868, the following was passed as

“the unanimous action of said Board of Directors

“ ‘Resolved,

“That the Oregon Central Railroad Company
“hereby accepts any grant of land which may have been
“made, or may be extended to said Company, and our
“Agent, A. M. Loryea, is hereby fully empowered to
“present a duly certified copy of this Resolution to the
“proper authorities as provided by law to be filed.”

“Witness my hanr and the seal of said corpor-
(Seal) “ation this the day and year above written.

S. A. Clarke,

“Secretary O. C. R. R. Co.”

“DEPARTMENT OF JUSTICE,

“Washington, May 9, 1871.

“Hon. Columbus Delano,

“Secretary of the Interior.

“Sir:

“In answer to your letter of the 8th inst, I have the
“honor to state, that my recollection of what passed at
“the informal conference between us, in regard to the
“case of the Oregon and California Railroad, entirely
“agrees with your own. I did not, it is true, examine
“the case with the care and deliberation which I should
“have exercised if an opinion had been formally called
“for. But my impressions were, and still are (subject,

“of course; to be reversed, if they appear incorrect after
“deliberate consideration), that the case of the Oregon
“and California Railroad has been properly adjudicated
“by Mr. Cox, your predecessor, and that a reversal of
“his decision by you should not be made, unless you
“should be most clearly satisfied that he was in error,
“inasmuch as the embarrassment growing out of con-
“trary decisions under such circumstances, would be
“most serious.

“The opinion of Mr. Smith, Assistant Attorney Gen-
“eral, appears to me, from cursory examination, to be a
“correct exposition of the law of the case.

“My opinion against the validity of the transfer of
“the rights of the Oregon Central Railroad Company
“to the Willamette Valley Company, dated February
“20, 1871, had relation exclusively to a case where the
“act of Congress signified no intention of dealing with
“any company but the one named in the act as grantee.

“The letter of the counsel for certain parties in in-
“terest, Mr. Chandler, to the President, complaining of
“your refusal to require the opinion of the Attorney
“General in the case of the Oregon and California Rail-
“road, seems to me to have been written under the
“erroneous conception of the relations between the At-
“torney General and the heads of other Departments.
“I think that the Attorney General should be called on
“for an opinion only when the head of the Department,
“in which the question arises, sees a good reason for the
“call, and not whenever a litigant before a Department

“desires the opinion.

“Very respectfully,

Your ob’t. serv’t,

“A. T. Akerman, Attorney General.”

DEFENDANTS’ EXHIBIT 377

consists of Senate Judiciary Committee Report No. 906. January 2, 1883: To accompany bill S. 2301, providing for the forfeiture of railroad grants in certain cases. This exhibit is as follows:

| | | |
|-----------------|---------|----------|
| “47th Congress, | SENATE. | Report |
| “2d Session. | | No. 906. |

“IN THE SENATE OF THE UNITED STATES.

January 2, 1883.—Ordered to be printed.

MR. GARLAND, from the Committee on the Judiciary, submitted the following

“ R E P O R T :

“(To accompany bill S. 2301.)

“The Committee on the Judiciary have for some time “had under consideration various memorials asking for “the forfeiture of certain railroad land grants, with several bills and resolutions on the same subject. The “resolutions and bills differ as to the way and manner “of securing forfeitures; some asking for a direct decla-

“ration by Congress; some seeking to invest the Secretary of the Interior with the power to make such declarations.

“Upon full consideration of all these propositions, in connection with the various grants to be reached in this way, the committee found great difficulty in devising any one plan that would be effectual. The grants themselves are different and do not by any means, in all cases, carry the same meaning as to the relative right and duties of the companies and the government.

“The committee is unwilling to confide this vast power of declaring forfeitures to any one officer of the government. In its essential elements it is a judicial proceeding; and while it is within the power of Congress in certain cases to make this declaration, it is deemed best for the security and protection of all concerned that some means of a judicial character should be devised to accomplish this end.

“In *Farnsworth vs. Minnesota and Pacific Railroad Company*, 92 U. S. Reps. (2 Otto), 66, the Supreme Court say:

A forfeiture by the state of an interest in lands and connected franchises, granted for the construction of a public work, may be declared for non-compliance with the conditions annexed to their grant, or to their possession, when the forfeiture is provided by statute, without judicial proceedings to as-

certain and determine the failure of the grantee to perform the conditions.

“This decision was preceded by the cases of *Schulenberg vs. Harriman*, 21 Wall., 44, and *United States vs. Repentinny*, 5 Wall., 211, to the same effect. These conditions, of course, are limited, and that carefully, to the language of the grants discussed, which provide clearly for the exercise of such power, and do not, as they could not, embrace cases in which the grants were upon different conditions. Without undertaking to decide whether in all grants of land by the United States to railroads Congress can declare this forfeiture, the committee considered it best to adopt some measure that would avoid this question, and place the parties in attitude towards each other that would insure to each fair dealing and justice as far as can be done.

“They propose to direct the Attorney-General to institute proper judicial proceedings against any railroad companies that he may have reason to believe are in default as to the conditions of their grants, to bring about a forfeiture, and secure the rights of the government to the lands. This information, in the nature of an information, will bring the supposed defaulting company into court, to be heard in defense against a forfeiture; and the court can enter such judgment or decree as in its opinion will secure to the government not merely in declaring a forfeiture, if need be, but in declaring resumption of the lands granted. Appeal to be allowed as in other cases in the courts.

“This proceeding, however, is not to interfere in any
“manner with any right of the executive under his au-
“thority to enforce and execute the laws to take posses-
“sion and dispose of any such lands, without these pro-
“ceedings where he could have done so if no act as con-
“templated by the committee had passed.

“While the committee had no doubt at all that some
“steps should be taken to declare forfeitures in many
“of these cases, yet they were of opinion that in all
“cases where reasonable and proper diligence and exer-
“tions had been used by any of these companies, they
“should have the benefit of the same in any proceedings
“against them; and accordingly the committee were of
“opinion it would be just to allow the companies to
“show in defense that for one year previous to the pas-
“sage of the act any substantial progress in good faith
“in the building of the roads, limiting this period to
“the first day of December, 1882. The substantial
“progress is to be considered and passed upon by the
“Attorney-General first before instituting proceedings,
“and then, if pleaded in defense of the proceedings in-
“stituted, the court is to pass upon it. Of course it is
“a difficult matter to determine what is substantial prog-
“ress, and no general rule touching it can be laid down.
“Therefore, the Committee would leave it general in
“this way, to be determined upon in each particular case.
“Some provision of this kind is necessary, as certainly
“the grants were made with a view of securing the build-
“ing and completion of the roads; and when efforts
“looking earnestly to that end are being made, the gov-

“ernment would not desire forfeitures to the grants.
“And this is in no sense a waiver by the government of
“any condition or requirement imposed upon any cor-
“poration; and when this progress is not shown to exist,
“it is made the imperative duty of the Attorney-Gen-
“eral to proceed against the companies.

“It is believed by the committee such a law will en-
“able the government to get rid of all these grants of
“lands to railroads that are not being used for legiti-
“mate purposes, or are misused, or in which no efforts
“are being made to build the proposed roads, and at the
“same time to have carried out all these grants in which
“the companies in good faith are trying to finish their
“roads. In other words, while such a law would be pro-
“tective of the rights of the government it would not
“be oppressive to corporations that are working and
“dealing fairly with the liberality of the government
“in trying to secure the objects of those grants.

“And to this end they have agreed on the bill here-
“with proposed, and recommend its passage.

“A BILL providing for the forfeiture of railroad
grants in certain cases.

“Be it enacted by the Senate and House of Repre-
“sentatives of the United States of America in Con-
“gress assembled, That in all cases where grants of lands
“of Congress have been made to aid in internal im-
“provements, and said lands have not been patented by

“the United States to the grantee, where the grantee was
“a corporation, or where the lands were granted to the
“State, and said lands have been disposed of by the
“State, and said grants have become subject to for-
“feiture or resumption by the United States for any
“cause whatever, it shall be the duty of the Attorney-
“General to cause suit or suits to be brought in the name
“of the United States in the proper courts having juris-
“diction, to obtain judgments declaring the forfeiture or
“right of resumption by the United States of such lands,
“as the case may be, which suit or suits shall be subject to
“trial or hearing like other suits, with right or writ of
“error or appeal by either party, as in other cases. This
“section shall not be construed so as to prevent the exec-
“utive authority of the United States from taking pos-
“session and disposing of any such lands without judicial
“proceedings in any case in which it could lawfully do
“so in this act had not been passed.

“Sec. 2. That the provisions of the first section of
“this act shall not apply to the case of any railroad (ex-
“cept as mentioned in section three of this act) in which,
“within one year preceding the passage of this act, any
“substantial progress in building the same has been ac-
“complished in good faith, and shall be continued in
“the manner hereinafter mentioned, or in which, before
“the rst day of December, eighteen hundred and eighty-
“two, there shall have been made any substantial prog-
“ress in the building thereof, and which progress shall
“be continued in good faith, as hereinafter mentioned.
“The foregoing provisions of this section, limiting the

“application of section one of this act, shall cease, determine, and be of no effect in the case of every railroad affected thereby the building of which shall not be in good faith or continued after said first day of December, eighteen hundred and eighty-two, to the number of miles in each year required by the act or acts granting such lands, or act or acts amendatory thereof, and in the manner so required, until such railroad shall be entirely completed.

“Sec. 3. That nothing in this act shall be construed to be a waiver of any condition or requirement imposed upon any corporation or in respect of any such grant by the act or acts granting lands to or in aid of it or amendatory thereof.

“Sec. 4. That in every case in which any corporation, or its lawful successor, being lawfully entitled so to do, shall not do the acts mentioned in section two of this act, it shall be the imperative duty of the Attorney-General of the United States to proceed against it as provided in section one of this act.”

DEFENDANTS' EXHIBIT 378

consists of certified copies: letters April 20, 1871, Jos. S. Wilson, President E. & O. Land Co. to Commissioner G. L. O.; April 20, 1871, I. R. Moores to Jos. S. Wilson; May 9, 1871, W. W. Curtis, Acting Commissioner, to Jos. S. Wilson; in regard to patent lands inuring to the railroad company; correspondence between Jos.

S. Wilson, President of the European and Oregon Land Company, and Willis Drummond, Commissioner of the General Land Office, running from March 21, 1871, to February 24, 1872, in re status of lands in the grant. This exhibit is as follows:

“DEPARTMENT OF THE INTERIOR
“GENERAL LAND OFFICE
“WASHINGTON

“April 11, 1912.

“I hereby certify that the annexed copies of letters
“dated April 20th and May 9th, 1871, respectively,
“———— are true and literal exemplifications and
“press-copy of letters in this office.

“IN TESTIMONY WHEREOF I have hereunto
(Seal) “subscribed my name and caused the
“seal of this office to be affixed, at the
“city of Washington, on the day and year
“above written.

“H. W. Sawyer,
“Recorder of the General
“Land Office.

“San Francisco, California,
“No 320 California Street,
“April 20d, 1871.

"The Honorable Commissioner of the

"General Land Office, Washington, D. C.

"Sir:

"Herewith is enclosed copy of a letter of this date
"from I. R. Moores, Esq., Land Agent of the Oregon
"and California Rail Road Company referring to Lists
"No. 1 and 2 on file in the Department embracing
"33,308 97/100 acres, selected as enuring to the Oregon
"and California Railroad Company under Act of the
"25th July, 1866, Vol. 14, page 237, and earnestly ask-
"ing for the early issue of the patents, the selection fall-
"ing within the portion of the Rail Road and telegraph
"line which has been completed according to the require-
"ments of the 4th section of the said Act.

"The Lists were sent to the General Land Office
"nearly nine months ago, and as no step can be taken
"to make the lands available until the Patents are issued
"it is respectfully requested they may be forwarded as
"speedily as practicable.

"Respectfully,

"Jos. S. Wilson,

"P. E. & O. Ld. Co."

"Copy. Office of the Land Department

"O & C. R. R. Co., Salem, April 20th, '71.

"Hon. Jos. S. Wilson,

"Prest. E & O. Land Co.,

"Dear Sir:

"I wish to call your attention to a very great embar-
"rassment we are laboring under, in the transaction of
"our business, in not receiving "Patent for the lands,
"and we are prohibited from selling until title passes
"to the Company by U. S. Patent.

"July 28, 1870 as agent of the Company I made se-
"lections of lands enuring to the Company for the first
"completed section of twenty miles of Road, said lands
"being embraced in Lists Nos, 1 & 2 of selections in
"place, amounting in area to 33,308 97/100 acres.
"Those Lists were promptly sent to the General Land
"Office, but as yet no Patent has been received and in
"consequence the Company cannot sell the lands, al-
"though in daily request. The tide of immigration now
"setting into our State causes a great inquiry for land
"and for the development of the county and the early
"settlement of the immigrants arriving it is a matter
"of great and urgent importance that the Company
"should receive the Patent at the earliest possible mo-
"ment, it will be seen by reference to Sec. 4 Act of July
"25, 1866, That when any completed section of twenty
"miles of Road should be reported upon and accepted
"by the President, The Company should be entitled at

“once to Patent, the lands above referred to being within
“the completed section are clearly within the class for
“which Patent should issue without delay. In the hope
“that this embarrassment may be soon removed by the
“receipt of the Patent,

“I remain,

“Very respectfully,

“(Signed)

I. R. Moores.”

“DEPARTMENT OF THE INTERIOR,

“GENERAL LAND OFFICE,

“Washington, D. C.,

“May 9th, 1871.

“Hon. Jos. S. Wilson,

“Presd’t. E. & O. Ld. Co.,

“320 California Street,

“San Francisco, Califa.

“Sir:

“Pursuant to your letter of the 20th ulto. I have the
“honor to state, that we have this day transmitted to
“I. R. Moores, Esq., Land Agent of the Oregon and
“California Rail Road Company at Salem, Oregon—
“Patent No. 1 as recorded Vol. 2, pages 137 and 148 in-
“clusive, of lands inuring to said Company under the

“Act of Congress of July 25, 1866, embracing in the
“aggregate, acres 32,517.21 100.

“Very respectfully,

“Your Obdt. Servt.

W. W. Curtis,

“Actg. Commissioner”

“DEPARTMENT OF THE INTERIOR,

“GENERAL LAND OFFICE,

“Washington.

April 11, 1912.

“I hereby certify that the annexed copies of papers
“and letters, are true and literal exemplifications of the
“original papers and letters, and press-copies of letters
“in this office.

IN TESTIMONY WHEREOF I have hereunto
(Seal)

“subscribed my name and caused the
“seal of this office to be affixed, at the
“city of Washington, on the day and
“year above written.

“H. W. Sawyer,

“Recorder of the General Land Office.”

“San Francisco, California,

“March 25th, 1871.

“The Honorable Commissioner of the

“General Land Office,

“Washington City, D. C.

“Dear Sir:

“On the 21st instant I wrote to elicit data essential
“at this place in order properly to make effective the
“grant to the Oregon portion of the Rail Road Con-
“cession by Act of 25th July, 1866, Vol. 14 p 239. In
“connection with the matter, I find it necessary further
“to trouble you, the present request being restricted to
“that portion of the Rail Road Grant by Act of 25th
“July, 1866, which extends from Portland in the North-
“ern part of Oregon to the Southern boundary of that
“State.

“(1st) The 2d section of said Act of 23d July, 1866
“orders that as soon as the Company files a map of the
“survey of said Railroad, or any portion not less than
“sixty continuous miles from either terminus, the Sec-
“retary shall withdraw from sale the railroad lands on
“each side.

“I request a sketch map showing the first sixty con-
“tinuous mile line according to the map of the survey,
“which may have been filed, giving date of filing with
“copy of the order of withdrawal and dispatched to the
“District Land Officers, and showing any additional
“miles of which a map may have been filed—It would

“also oblige me if the Commissioner will let me know
“from time to time when such map of sixty continuous
“miles is filed, with dates of orders of withdrawal ac-
“knowledge of receipt of such orders.

“(2d) The 4th section of said Act of 25th July,
“1866 orders that when the Company completes and
“equips for service twenty miles of the road, three com-
“missioners are to be appointed by the President, and
“upon report, under oath, as to the facts, patents to
“issue.

“It would be gratifying to me to know from time to
“time when such commissioners make report and result
“as to issue of patents.

“3d. The 6th section of said Act of 25th July, 1866
“is so amended by the Act of April 10th, 1869—Stat-
“utes 1869—Chap. 47, that the Company may file its
“assent within one year from 10th of April, 1869, viz:
“until 10th April, 1870.

“I respectfully inquire the date at which the requisite
“assent was filed.

“4. The Oregon portion of the railroad grant, viz,
“from Portland to the Southern boundary of that State
“traverses the Willamette, Umpqua and Rogue River
“Valleys.

“I request an estimate of the quantity of land fall-
“ing ‘in place’ to the said railroad grant in the Willam-
“ette Valley specially, and like information as to the
“other two valleys if convenient. I would also be glad

“to know the probably quantity that may be taken as
“ ‘Indemnity’ in the Willamette.

“I acknowledge with thanks your telegraphic reply
“of the 23d March, recognizing the right to make up
“the ‘deficiency in given twenty miles’ from overplus of
“the next continuous miles. Does not the principle al-
“low, in other words, the right of making selections
“along the whole length of the road from one twenty
“miles to another, and so on for the entire length of the
“road, in order to make up the full quantity enuring
“under the law of Congress?

“An early reply will oblige, truly yours

“Jos. S. Wilson.

“Please address care of Hon. Wm. Norris, 217
“Sansome Street, San Francisco.”

“San Francisco, California,

“March 21, 1871.

“The Honorable Commissioner of the

“General Land Office,

“Washington City, D. C.

“Dear Sir:

I today telegraphed the Commissioner to ascertain
“the quantity enuring to the California-Oregon Land
“Company under Act of 25th July, 1866, Vol. 14, page

“239—also Statutes 1869, page 47, from Portland to
“the Oregon Southern boundary, and whether the de-
“ficiency in any given twenty miles may be made good
“from the overplus within another twenty miles, or in
“other words, whether under any recent rulings selec-
“tions may be made along the whole length of the road
“so as to make up the full quantity of land enuring un-
“der the law of Congress.

(1st) I would be glad to have this data by letter also,
“with full details giving the quantity ‘in place’ and
“separately that which may be awarded as ‘Indemnity’,
“approximately, of course.

(2d) I request copies of list of such selections as may
“have been already approved with,

“(3d) Copy of any list which may have been received
“and is now under examination at the Department with
“a view to approval.

(4) Please cause me to be officially notified of the
“receipt at the Department from time to time of lists
“for approval, giving quantity in each, stating the
“amount ‘in place’ and that claimed as ‘Indemnity.’

“(5th) It is important, and I therefore request to
“be advised of the date of orders for withdrawal from
“time to time, with lists of the townships embraced in
“such withdrawals, and date of reception of each at the
“District Land Office.

“(6) Also please send verified lists of approved selections as rapidly as approved to Hon. Wm. Norris, California-Oregon Land Company, No. 217 Sansome Street.

“The data now requested is not only important as a right to the grantee under the Acts of Congress, but of great public importance in opening up to settlement and cultivation a most interesting region of our country, among the most remote from the Capital of the political Mosaic blocks of the Union.

“The Company has its agents in Oregon who are arranging with great energy in the important work before them of pushing forward the construction of the road and making the selections as the law requires.

“Early action in the matters mentioned in the foregoing will oblige very respectfully and truly yours,

“Jos. S. Wilson.”

“DEPARTMENT OF THE INTERIOR,

“GENERAL LAND OFFICE,

“Washington, D. C.

“April 7th, 1871.

“Hon. Jos. S. Wilson,

“San Francisco, California.

“Sir:

“I have the honor to acknowledge the receipt of your

“letters of 21st & 23d ulto. and say that we will furnish the requisite data, touching the Oregon and California Rail Road, at as early a date as the pressing business of the office will allow.

“Very respectfully,

“Your obdt. servt.

“Willis Drummond,

Commissioner.”

“DEPARTMENT OF THE INTERIOR,

“GENERAL LAND OFFICE,

‘Washington, D. C. April 19, 1871.

“Hon. Jos. S. Wilson,

“Presd’t. Pregon & Califa. Land Co.,

“San Francisco, California.

“Sir:

“Pursuant to your letters of 21st & 23d ulto. which receipt was acknowledged the 7th inst, I have the honor to present the following data and statement, respecting the grant by Congress of 25th July 1866, for the Oregon and California Rail Road Company of Oregon.

“First: *Estimated* length of road
 “from Portland to the
 “Southern Boundary Line of

“Oregon is 350 miles, and
 “twenty *odd* sections, to the
 “mile will make the area of
 “the grant, *as estimated*
 “4,480,000 acres. From this
 “deduct the estimated quan-
 “tity taken by Donation
 “claims, sales and otherwise
 “appropriated, 2,370,000 acres.

“Thusleaving after deduct-
 “ing the foregoing, the esti-
 “mated vacant *odd* sections
 “falling within the granted
 “limits, 2,110,000 acres.

“*Second* Estimated quantity of odd
 “sections falling within the
 “*indemnity* limits of ten ad-
 “ditional miles set apart by
 “said Act for said Company, 1,050,000 acres.

“Total amount estimated as
 “available 3,160,000 acres.

“*Third:* Estimated quantity of the
 “2,110,000 acres as lands ‘in
 “place’ that fall within the
 “Willamette Valley is acres
 “—900,000

| | | |
|-------------------|------------------------------|---------|
| “ <i>Fourth</i> : | Estimated quantity failling | |
| | “within the indemnity limits | |
| | “of said road in the Willam- | |
| | “ette V. | 450,000 |

“Total 1,350,000 acres.

“You will find enclosed copy of List No. 1, embracing 32,517.30 acres selected in the Oregon City District. The same has been carried into patent, and as soon as recorded will be ready for transmission.

“I also enclose sketch map showing line of road according to the maps of survey filed pursuant to the 2nd section of said Act of July 25, 1866, as well as copies of the order of withdrawal.

“You will be advised whenever the Commissioners make their report, as required by the 4th section of said act.

“In regard to the 6th section of the granting Act, as amended by the Act of April 15th, 1869, requiring the Company to file their assent within one year, I have the honor to state, that such assent was filed in the office of the Secretary of the Interior, June 24th, 1869.

Very respectfully,

“Your Obdt. Servt.

“Willis Drummond,

“Commissioner.”

“Proclamation No. 685 & State Map transmitted

“May 29, 1871—See letter by Mr. Robinson.

“San Francisco, California,

“April 3, 1871.

“The Commissioner of the

“General Land Office,

“Washington City, D. C.

“Sir:

“Will you please cause to be sent to me copy of the
“proclamation for public sales of lands in the State of
“Oregon, indicating on an accompanying sketch may in
“blue color, the several townships and parts of town-
“ships which have been actually offered at public sale,
“pursuant to proclamation, with dates of offering.

“Enclosed is a memo. of results made up by a gen-
“tleman in Oregon as to the extent and quantity enur-
“ing to the grant by Act of 25th July, 1866, Vol. 14. p
“239, which I request may be tested by the records of
“the office. Further, I would be glad to have sent to
“me a few of the general agricultural circular of 23d
“August, 1870, and mineral circular of 8th August,
“1870.

“Respectfully,

“Your ob. Servt.,

Jos. S. Wilson,

“Care of Hon. Wm. Norris, No. 217 Sansome Street”

“Special—

“Item from report dated 18th March, 1871, at Salem, Oregon, from the agent of the Oregon and California Land Company, in view of the grant by Act of 25th July, 1866, the agent having been a resident of Oregon for 19 years, and part of the time engaged in practical surveying for the Government.

“(1st) By the terms of that Act—12,800 acres per mile are granted, to be taken within the odd alternate selections within 20 mile limits, each side, with the right to indemnity within 10 miles beyond the 20 mile limits.

“(2d) The road extends from Portland to the California line, a distance of about 350 miles.

“(3d) Making amount of land enuring to the Company upon completion of the road 4,480,000 acres. (Four million four hundred and eighty thousand acres.)

“In consequence of the earlier and denser settlement of the lower part of the Willamette Valley, a much larger proportion of the country is surveyed and claimed by the settlers than is the case southward.

“(4) The Willamette Valley 150 miles from Portland, the road will enter the Umpqua and thence through the Rogue River Valley to the California line.

“(5) In the Umpqua and Rogue River Valleys the settlements extend but few miles from the located line

“of road, but upon extension of the public surveys and
“completion of the road a much fuller development of
“the resources of that region is expected.

“The agent reports that he has selected by number
“on lists, No. 1 to 7 inclusive, comprising the surveyed
“lands within the limits of the grant from the base line
“at Portland to the Southern limit.

“(6) of the Willamette (Oregon City) Land Dis-
“trict at Township 14 South, 180,000 acres.

“(7th) There can be selected when the surveys are
“completed within same limits 452,000.

“(8) Making in the Willamette at Oregon City
“Land District a total of 632,000 acres.

“(9th) The length of the road in the Willamette
“for Oregon City District is 96.66 miles.

“(10) The land to which the Company is entitled
“for the same is 1,237,333 acres.

“(11) Amount as above surveyed and unsurveyed
“632,000 acres, leaving a deficit of 605,000, which it is
“supposed will be made good upon the extension of the
“road southerly through the Umpqua and Rogue River
“Valleys, where the settlements are more limited, and
“so it is reported that in the agent’s judgment the Com-
“pany will be able to realize the amount of the entire
“grant, acres 4,480,000.

“Note. Referring to the 5th head in the foregoing please

“state whether instructions have been despatched to
“make the Oregon surveying approximation available,
“and whether S Genl’s attention has been drawn to the
“necessity of completing the survey in order to make
“the Congressional grant available.

“Note. Referring to the 6th head in the foregoing—
“Have the 7 lists of selection there mentioned been re-
“ceived by the Dept, embracing 180,000 acres, and when
“will they be prepared for approval.

“Please carefully examine the data furnished in the
“foregoing from the thoroughly agent of the Company
“in Oregon and let me be fully advised as to the results
“with answers to inquiries Note 5 and 6.

“I request half dozen of each of the circulars—the
“general agricultural circular of 23d August, 1870 and
“that of the minerl of 8th August 1870.

“April 3d, 1870.

“Jos. S. Wilson.”

“DEPARTMENT OF THE INTERIOR,

“GENERAL LAND OFFICE,

“Washington, D. C., April 21st, 1871.

“Hon. Jos. S. Wilson,

“Presd’t. Oregon & Califa. Land Co.,

“San Francisco, Califa.

“Sir:

“Pursuant to your letter of 3d inst., I have the honor

“to transmit herewith half a dozen of each of the circulars—The General Agricultural Circular of 23d August, 1870, and that of the Mineral of August 8th, 1870.

“I have also to report that the Lists of selections referred to under 6th Head, as having been made by the Oregon & California Railway Company in the Oregon City District, have not reached this office.

“The requisite data as to the available lands to go to said Railway Company in the Umpqua and Rogue River Valleys and thence to the California State line, will be ascertained and given in separate communications as well as information relative to the surveys in Oregon.

“Very respectfully,

“Your Obdt. Servt.

“Willis Drummond,
“Commissioner.”

“WESTERN UNION TELEGRAPH
“COMPANY.

“Dated San Francisco, May 17, 1871. Received at Washington, D. C. 8:45 A. M.

“To Hon. Commissioner Genl. Land Office.

“Please telegraph when Rail Road patent mentioned in commissioner’s letter of nineteenth of April may be

“expected, also-as to these or lists three, four, five, six
“seven.

“Jos. S. Wilson.

“Care Wm. Norris.”

“Telegram.

DEPARTMENT OF THE INTERIOR,

“GENERAL LAND OFFICE,

“Washington, D. C. May 18, 1871.

“Rail Road patent No. 1, transmitted 9th inst., to
“I. R. Moores, Salem, Oregon. Lists three to seven
“inclusive just received.

“W. W. Curtis,

“Actg. Commissioner.

“Hon. Jos. S. Wilson,

“320 California Street,

“San Francisco, Cal.”

“San Francisco, California,

No. 320 California Street,

“May 12th, 1871.

“To the Hon’ble Commissioner of the General Land
“Office,

“Washington, City, D. C.

“Sir:

“By letter of the 29th ulto. from the Company’s

“Land Agent in Oregon, I understand that additional
“Lists (No. 3, 4, 5, 6, 7) have been sent to Washing-
“ton, of lands enuring to the Oregon and California
“Rail Road Company under the Act of Congress ap-
“proved 25th July, 1866. Those lists (with Nos. 1 & 2)
“embrace the quantity of acres 174,846.73 of that
“quantity the selection of a 32,517.20 has been approved,
“and the receipt of the Patent expected according to ad-
“vices in the Commissioner’s letter of the 19th April
“last. I beg leave to request that the 5 Lists above re-
“ferred to may be examined and as far as correct may
“be approved and carried into Patent at an early period.

“The heavy expenses incurred in realizing the pur-
“pose of Congress in regard to the construction of the
“railway and telegraph at so distant a point made it a
“serious concern to the grantees to have the patents
“so as to make the means available that are allowed by
“the statute which can only be done after the issuing
“of the patents.

“I should feel obliged if you will advise me at about
“what time it is probable that final action may be ex-
“pected in respect to the approval and transmission of
“the patents in these cases.

“Very respectfully,

“Your Ob. Servt.,

“Jos. S. Wilson.”

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C., June 1, 1871

"Hon. Jos. S. Wilson,

"San Francisco, Califa.

"Sir:

"I have the honor to acknowledge the receipt of your
"letter of the 12th ulto, and state that Lists Nos. 3, 4,
"5, 6 & 7, of the Oregon and California Railroad selec-
"tions in the Oregon City district, Oregon under the
"Act of July 25th, 1866, and embracing in the aggre-
"gate, 141,537.76/100 acres, were received on the 18th
"ulto. They will be designated upon our records, ex-
"amined and listed for approval at the earliest practi-
"cable period.

"Very respectfully,

"Your obdt. servt.

"Willis Drummond,

"Commissioner."

“WESTERN UNION TELEGRAPH
“COMPANY.

“Dated San Francisco, Cal., 18 July, 1871. Re-
“ceived at 9:35 A. M.

“To Hon. Com’r. Gen. Land Of.

“Please telegraph me when Oregon & California
“R. R. patent Number two may be expected.

“Jos. S. Wilson

“Telegram.

“DEPARTMENT OF THE INTERIOR,
“GENERAL LAND OFFICE,

“July 19, 1871

“Sir:

“Oregon and California Rail Road Patent number
“two ready for transmission on 22nd.

“Willis Drummond,
“Commissioner.

“Hon Jos. S. Wilson,
“320 California Street,
“San Francisco, Cal.

“Office of
“EUROPEAN AND OREGON LAND
“COMPANY.

“San Francisco, Cal., September 29th, 1871.

“Hon. Commissioner of the General Land Office,
“Washington City, Dist. Col.

“Very respectfully,

“Col. I. R. Moores, Portland, Oregon, has written
“me under date of the 16th instant, in regard to Patent
“No. 2 in favor of the ‘Oregon and California Rail Road
“Company’, which was transmitted to him under date
“July 22d, 1871, from the General Land Office, and in
“which the following appears, viz:

“1st. The said Patent calls for the S. $\frac{1}{2}$ of the
“N. W. $\frac{1}{4}$ of Section 33 in Township 8 South of Range
“1 E. and as containing 160 acres. The true area of the
“tract is only 80 acres, but the subdivisinal description
“in the patent controls quantity, and only conveys the
“aforesaid S. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$.

“The intention in the description coupled with said
“quantity was doubtless to convey to the Company the
“other subdivision of its land in said section, viz: The
“S. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of Sec. 33, R. S. 1 E., because
“the two subdivisions just make up the quantity of 160
“acres as given in said patent.

“To relieve the case from difficulty, I request you
“will order a list in the usual form to be officially ap-
“proved for said S. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of Sec. 33, 8 S.
“1, containing 80 acres, so as to furnish evidence of the
“Company’s right to this tract, which lawfully enures
“to it under the Act of Congress, approved 25th July,
“1866, U. S. Statutes, Vol. 14, page 239.

“I ask that this matter may receive prompt atten-
“tion, and in sending transcript to Col. I. R. Moores, at
“Portland, Oregon, I should be glad if a copy at the
“same time be sent to the undersigned.

“2d. The aforesaid Patent No. 2 embraces the fol-
“lowing portions of Sec. 19, Township 5 S. R. 3 E., viz:

“The S. $\frac{1}{2}$ of said Sec. 19

“The S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ Sec. 19

“The N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ Sec. 19

“The SW $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec. 19

“Containing 526.78 Acres.

“On examination of the transcript plat of said town-
“ship the donation claim of Clifton R. Calaghan is
“found there represented as embracing the greater por-
“tion of the land embraced in said subdivision.

“3. Another inadvertance is reported as existing
“in said patent which embraces Lots numbered 1, 2, 3,
“and 4 of Section 31, containing 68.44 acres in Township
“6 South of range 5 West, whilst it is reported that three

“of these lots, Nos. 2, 3, 4 are included in the donation
“claim of G. B. Savery, leaving only lot No. 1 in that
“section belonging to the Company. I have not, how-
“ever the transcript plat before me, but present the mat-
“ter as reported.

“The object of this is to request that a careful ex-
“amination be made, and that I may be advised of the
“exact status of each of the donation claims referred
“to, viz: of Clifton R. Callaghan & G. B. Savery.

“I should be glad to be informed if they have been
“finally recognized as valid and patented, so that a prop-
“er marginal note and entry may be made in order that
“the Company may not interfere in the way of disposal
“of any portion of the premises taken by a prior valid
“claim, where such exists.

“Early information in regard to the 2d and 3d cases,
“and compliance with the application under the 14th
“head is requested by Very respectfully your ob. servt.,

“Jos. S. Wilson.”

“WESTERN UNION TELEGRAPH
“COMPANY.

“Dated San Francisco, Cal., 18 Nov., 1871. Re-
“ceived at 8:55 A. M. 21st.

“To Com'r. General Land Office.

“Suspend action on large list Oregon selections or

“railroad lands from Roseburg to California line. Telegraph acknowledgment. Grounds for rejection mailed.

“Jos. S. Wilson.

“Answer to telegram Nov. 21st. Cromwell.”

“DEPARTMENT OF THE INTERIOR,
“GENERAL LAND OFFICE,

“Nov’r. 21st, 1871.

“Telegram of the 18th inst., received and noted.

“Willis Drummond,
“Commissioner.

“Hon. Jos. S. Wilson,
“San Francisco,
“California.”

“Collect.”

“Office of

“EUROPEAN AND OREGON LAND
“COMPANY,

“San Francisco, Cal., 18th November, 1871.

“Hon. Commissioner of the General Land Office,
“Washington City, Dist. of Col.

“Sir:

“I received this morning a letter dated the 13th
“inst., at Portland, Oregon, from I. R. Moores, ‘Ore-

“gon & California Railroad, Land Department’, re-
“ferring to the fact that a preliminary survey was made
“by the Hon. Jesse Applegate more than a year ago
“of the definite location of the said Oregon and Califor-
“nia Railroad, under Act of Congress approved 25th
“July, 1866—Statutes Vol. 14 page 239—from ‘A short
“distance from Roseburg to the California line’ an
“authenticated map of which will soon be sent to the
“Department as the basis for Departmental orders of
“withdrawal.

“In the meantime I send herewith a map believed to
“be approximately correct, indicating the extended line
“of route in the region above mentioned, and understand-
“ing that ‘a large list of selections made by the State
“authorities to lands within the limits’ (20 and 30 mile
“lateral) which are fixed under the Statutory Grant of
“25th July, 1866, by the definite location and actual sur-
“vey of the route from a short distance as aforesaid, from
“Roseburg to the California line.

“My present object is to present this,

“1st. As a Caveat against any official action on
“said State Selection List until the receipt by the De-
“partment of the verified map of the said definite loca-
“tion and survey of the aforesaid railroad south of Rose-
“burg, and

“2nd. To ask that as soon as this latter map is re-
“ceived by the Department that the State selection may
“be definitely rejected of any and all tracts enuring

“under the Statutory Grant aforesaid, and the established decisions to the aforesaid Railroad company
“and that the undersigned may be promptly advised of
“the official action in this respect.

“Requesting an acknowledgment of the receipt of
“this, I remain,

“Respectfully,

“Jos. S. Wilson.”

“DEPARTMENT OF THE INTERIOR,

“GENERAL LAND OFFICE,

“Washington, D. C.,

“Jan’y. 4th, 1872.

“Hon. Jos. S. Wilson,

“San Francisco, Califa.

“Sir:

“I have the honor to acknowledge the receipt of your
“letter of 18th Novr. last, and the accompanying preliminary map, indicating the extended surveying line
“of route of the Oregon & California Rail Road from
“a point near Roseburg, Oregon, to the California State
“line.

“In regard to the State selection List—made within the limits of said Railroad, South of Roseburg, I
“have to say has not yet reached this office, but when
“received, official action will be suspended until said

"Railroad limits are fixed according to the map to be
"filed soon, duly authenticated.

"Very respectfully,

"Willis Drummond,

"Commissioner."

"Office of

"EUROPEAN AND OREGON LAND
"COMPANY,

"San Francisco, Cal., January 9th, 1872.

"Honble Commissioner of the General Land Office,

"Washington City, D. C.

"Sir:

"By letter dated 26th ulto. at Portland, Oregon,
"from Col. I. R. Moores, Agent of the Oregon and Cali-
"fornia Railroad Company, I am advised that a map,
"in good shape, has been transmitted to the Department
"showing the definite location of the route of the Rail-
"road from Township 30 South to the California line.

"I beg leave therefore respectfully to ask,

"1st. That immediate orders may be given to the
"Register and Receiver for the withdrawal of the odd
"numbered sections enuring to the Company under the
"Statutory Grant by Act of Congress approved 25th
"July, 1866, United States at large, Vol. 14 page 239;

“and that

“2nd. A copy of the orders of withdrawal may be
“sent to the undersigned, with

“3d. A copy of the sketch map which may be sent
“to the Register and Receiver, as their guide and basis
“of withdrawal, such maps, involving comparatively in-
“considerable labor as they are usually prepared on
“printed sheets of Townships, in a scale of an inch and
“a half to a township, indicating the line of route with
“the 20 and 30 mile lateral limits.

“A prompt acknowledgment, and compliance will
“oblige the Company, and undersigned, and be of real
“service not only to said Company, but in such prompt
“award of the right under the law, conflicts of title will
“be avoided, whilst at the same time the interest of the
“United States will be directly advanced by enabling
“the Government to realise the double minimum for the
“even numbered sections of public lands within the
“range of the Grant.

“Respectfully,

“Jos. S. Wilson, Prest.”

“Office of
 “EUROPEAN AND OREGON LAND
 “COMPANY,

“San Francisco, Cal., October 26th, 1871.

“The Hon. Commissioner of the General Land Office,
 “Washington City, Dist. Col.
 “Sir:

“By letter of the 21st instant from I. R. Moores,,
 “Esq. Portland, Oregon, I am advised that Lists of
 “selections of lands in the Roseburg Land District, Ore-
 “gon, enuring under the Act of Congress approved 25th
 “July, 1866, to the Oregon and California Railroad
 “Company, were transmitted about the 1st instant by the
 “Register of the Land Office at Roseburg to the Gen-
 “eral Land Office.

“These Lists embrace an aggregate of

| | |
|----------------------------|-------------|
| “Lands ‘in place’ of acres | 235,441.19, |
| “ ‘Indemnity’ lands | 26,588.89 |

Acres 262,030.8/100.

“There is reason to believe that in the preparation of
 “these Lists every precaution was used to avoid con-
 “flict, secure accuracy, and make them as complete as
 “possible, it having been reported to me that ‘the Regis-
 “ter thinks every tract will be patented as he was very
 “careful.’ This preliminary painstaking will necessarily

“lessen the labor of official examination, and facilitate
“the preparation of the official lists for approval, and
“as it is a matter of supreme importance to the interests
“of the Company to have, at an early period, the usual
“lists of approval in view of the enormous outlays re-
“quired in constructing this railway to span Western
“Oregon from north to south, I beg leave earnestly to
“request that you will cause the work to be immediately
“placed in hands, and that the desired transcript Lists
“of approval may be transmitted with all practicable
“despatch, and if they should be sent within the ensuing
“month to I. R. Moores, Land Agent of the Company
“at Portland, Oregon, and the undersigned advised of
“the fact, he would feel greatly obliged.

“Very respectfully,

“Your obt. servt.,

“Jos. S. Wilson, Pres.”

“DEPARTMENT OF THE INTERIOR,

“GENERAL LAND OFFICE,

“Washington, D. C., Jan. 25, 1872.

“Hon. Jos. S. Wilson,

“San Francisco, Cal.,

“Sir:

“I have the honor to advise you in regard to the
“Oregon & California Railroad lists of selections in Ore-

“gon, which were the subject of your letters of 26th
“October and 30th Decr. last, that the same were duly
“received 7th Oct. 1871, and have been designated upon
“the tract books of this office.

“I have further to state, that said lists No.
“1 and 2—Roseburg district—embracing in the ag-
“gregate 262,038.8/100 acres, are lands lying south, &
“beyond the constructed 4th section of twenty miles of
“said road, as shown by certificates on file, and accord-
“ing to the terms of the 4th section of the granting act
“of July 25th, 1866, the lands this embraced in said
“lists will have to await the filing of advanced construct-
“ed sections of road—before any steps can be taken to-
“ward the patenting of said selections.

“Very respectfully,

“Willis Drummond,

“Commissioner.”

“Office of

“EUROPEAN AND OREGON LAND

“COMPANY,

“San Francisco, Cal., December 30th, 1871.

“The Hon. Commissioner of the General Land Office.

“Washington City, Dist. of Col.

“Sir:

“On the 26th of October last, I had the honor to

“address a communication to the Commissioner referring
“to certain Lists of selections sent by the Register at
“Roseburg about the 1st of that month for lands enur-
“ing to the Oregon and California Railroad Company
“under the Congressional Grant by Act of 25th July,
“1866—Statutes Vol. 14, page 239.

“Great care was observed in preparing those lists,
“so as to avoid any interference with the rights of others,
“and render them as complete and accurate as possible,
“in order that by lessening the labor of Departmental
“examination, prompt official action might be secured,
“and in inviting attention to the subject, the hope was
“expressed that the work might be completed within
“the month of last November.

“As I have received no intimation as to what has
“been done, now acknowledgment, and as the early ap-
“proval of the lists is a matter of grave and most press-
“ing importance to the Company in view of very heavy
“outlays, and the necessity for making immediately
“available the lands which have been granted, I am con-
“strained again to trouble the Commissioner by asking
“that the work be pressed to completion, & the requisite
“list of approval forwarded at the earliest period pos-
“sible, thereby rendering legitimate service to the Com-
“pany, and obliging the undersigned.

“Requesting an acknowledgment of the receipt of
“this, and advice as to the time the approval may be
“expected, I remain

“Very respectfully,

“Jos. S. Wilson,
“Pres.”

“Office of
“EUROPEAN AND OREGON LAND
“COMPANY,

“San Francisco, Cal., Jan. 17th, 1872.

“The Hon. Commissioner of the General Land Office.

“Washington City, D. C.

“Sir:

“I have received your letter of the 4th instant
“acknowledging the reception of mine of the 13th No-
“vember last accompanied by preliminary map of the
“route of the Oregon and California Railroad from
“near Roseburg to the California line.

“Since then the formal authenticated map has been
“transmitted, as mentioned in my communication of the
“9th inst. requesting the immediate issue of the orders
“of withdrawal & that I might be furnished with a copy
“of the same, and of the connected plat sent to the Dis-
“trict Land Officers as the basis of withdrawal.

“I learn from your favor of the 4th inst. first above
“referred to, that the State Selection List (Agricultural
“College) which I had reason to suppose had been sent
“to the Department, embracing odd numbered sections
“belonging to the Company, had not reached the Gen-
“eral Land Office. I had received information that
“such selections had been made right on the track of,
“and adjacent to the actually established railroad route
“in townships 38, 39 & 40 South, of Range 9 & 10 East.

“Should such selections interfering with the prior vested
“rights of the Company to the odd sections in lateral
“limits be presented, it is earnestly requested, as a simple
“act of justice to said Company, that the cancellation of
“the same be immediately ordered, and then the State
“authorities can select other lands extending if desired,
“so the even numbered sections under the statutory lim-
“itations.

“Your prompt compliance both as to the issue of the
“orders of withdrawal, and cancellation of the invalid
“interfering sections, will, in subserving the ends of jus-
“tice, oblige the Company and

“Very respectfully,

“Jos. S. Wilson.

“Prest.”

“FRANKLIN TELEGRAPH CO.

“Feby. 20, 1872.

“By telegraph from San Francisco

“To Willis Drummond,

“Commissioner G. L. O.

“Is Oregon and California Railroad map recd. &
“withdrawal order given.

“Jos. S. Wilson

Prest. E. & O. L. Co.,

“420 California St.”

"Telegram.

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

Feby. 24th, 1872.

"Sir:

"Map of Oregon and California Railroad received
"and under consideration.

"Willis Drummond,

"Commissioner.

"Hon. Jos. S. Wilson,

"320 California Street,

"San Francisco, Cal.

"Collect."

"Office of

"EUROPEAN AND OREGON LAND

"COMPANY,

"San Francisco, February 24th, 1872.

"Honble. Commissioner of the General Land Office.

"Washington City, D. Col.

"Sir:

"Your letter of the 25th ulto, retarded in its transit
"by snow obstructions, has come to hand, acknowledging

“the receipt on 17th October last of Roseburg Land
“District Selections in Lists Nos. 1 and 2 which are the
“subject of letters to you from the undersigned of the
“26th October and the 30th December last.

“The Commissioner referring to the 4th section of
“the Act of Congress approved 25th July, 1866 (Vol.
“14, page 239) making the Grant for the construction
“of the Oregon and California Rail Road, properly
“states that the lands ‘embraced in the said Lists, will
“have to await the filing of advanced constructed sections
“of road, before any steps can be taken towards patent-
“ing of said selections.

“Aware of that fact, it will be seen that in the letters
“above mentioned of 26th October and 30th December
“no application is made for the patent. Their issue will
“necessarily have to be deferred until the preliminary re-
“quirements as to further constructed sections shall have
“been met. What is not wanted, however, and to which
“there is no legal interdict, is that the Lists shall be tak-
“en up, examined and tested and where the selections are
“found perfectly regular, and correct, and free from in-
“terference, that the usual List of approval may be fur-
“nished at the same time it would be a gratification to
“the Company to have transcript of the approved List,
“so as to be certain as to the particular lands enuring
“under the Grant, on which they can rely as a land
“fund, and for which ultimate title as stipulated in said
“4th section is to be given by patent, upon meeting the
“statutory requirements aforesaid. The request is there-

“fore respectfully renewed for prompt transmission of
“the issued List.

Very respectfully,

“Jos. S. Wilson.

“Prest.”

DEFENDANTS' EXHIBIT 379

is a certified copy of map showing the definite location of the line of the Oregon Central Railroad under the act of May 4, 1870, under seal of the General Land Office.

This map is not printed, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 380

is a statement purporting to show in a general way the financial operations of the Oregon Central Railroad Company (East Side), the Oregon Central Railroad Company (West Side), and the Oregon & California Railroad Company as gathered from records of meetings of directors and stockholders of said companies, and is as follows:

STATEMENT SHOWING IN A GENERAL WAY THE FINANCIAL OPERATIONS OF THE OREGON CENTRAL RAILROAD COMPANY (EAST SIDE), THE OREGON CENTRAL RAILROAD COMPANY (WEST SIDE) AND THE OREGON & CALIFORNIA RAILROAD COMPANY AS GATHERED FROM THE RECORDS OF MEETINGS OF DIRECTORS AND STOCKHOLDERS OF SAID COMPANIES.

| Date | Transactions | Stocks | Bonds | Floating Debt | Net Investment |
|---------|---|-----------------|---------------|---------------|----------------|
| 3/17/70 | O&C RR incorporated and issued Capital Stock | \$20,000,000.00 | | | |
| 3/29/70 | O&CRR Co. acquired OCRR Co. (East Side) under agreement to pay Ben Halladay & Co. amount invested | | | 1,000,000.00 | 1,000,000.00 |
| 4/14/70 | O&CRR Co. issued 1st Mortgage Bonds US Bill of Complaint in | | 10,950,000.00 | | |

| Date | Transactions | Stocks | Bonds | Floating Debt | Net Investment |
|---------|--|--------|--------------|---------------|----------------|
| | Suit 3340 alleges (P 26) this bond issue produced in cash, approximately | | | | 8,000,000.00 |
| | it does not appear from the O&C records what amount was produced. | | | | |
| About | | | | | |
| 10/6/80 | O&CRR Co. acquired OCRR Co. (West Side) subject to outstanding bonds | | 4,395,000.00 | | |
| | Pledged as collateral for two notes | | | 1,000,000.00 | 1,000,000.00 |
| | Outstanding 2nd Mortgage Bonds | | 300,000.00 | | 300,000.00 |
| | And with the following investment: | | | | |

| Date | Transactions | Stocks | Bonds | Floating Debt | Net Investment |
|------|---------------------------------|--------|-------|---------------|----------------|
| | Cash paid on Capital Stock.... | | | | 47,531.17 |
| | Net earnings from operation... | | | | 38,657.81 |
| | Rental received from Western | | | | |
| | Oregon RR..... | | | . | 23,250.00 |
| | Note due Northwestern Con- | | | | |
| | struction Company..... | | | 13,006.82 | 13,006.82 |
| | Amount due O&CRR Co..... | | | | 120,997.40 |
| | Individual Subsidiaries..... | | | | 95,466.24 |
| | Cash received from sales of | | | | |
| | Granted Lands..... | | | | 4,934.69 |
| | Rental due from WORR Co.... | | | | 1,750.00 |
| | Interest covering two notes for | | | | |
| | \$1,000,000.00 | | | 612,796.34 | |

| Date | Transactions | Stocks | Bonds | Floating Debt | Net Investment |
|--------|------------------------------------|---------------|--------------|---------------|----------------|
| | Unpaid interest coupons on 2nd | | | | |
| | Mortgage | | | 84,000.00 | |
| | Accrued interest on last item | | | | |
| | after maturity | | | 13,230.00 | |
| 2/1/81 | O&CRR Co. Capital Stock reduced | | | | |
| | by surrender..... | 18,240,800.00 | | | |
| | Upon the remaining \$1,759,200.00, | | | | |
| | Capital Stock, full payment was | | | | |
| | made | | | | 1,759,200.00 |
| | New 1st Mortgage Bonds issued.. | | 2,000,000.00 | | 2,000,000.00 |
| | O&CRR Co. acquired Western Or- | | | | |
| | gon R. R. Co., subject to cost of | | | | |
| | construction due Northwestern | | | | |
| | Construction Co. | | 1,520,564.05 | | 1,520,564.05 |

| Date | Transactions | Stocks | Bonds | Floating Debt | Net Investment |
|--------|---|---------------|--------------|---------------|----------------|
| 5/7/81 | O&CRR Co. increased Common Stock by | 5,240,800.00 | | | |
| | O&CRR Co. issued Preferred Stock | 12,000,000.00 | | | |
| | O&CRR Co. issued General Mortgage Bonds | | 6,000,000.00 | | 5,280,000.00 |
| | Original O&CRR Co. 1st Mortgage Bonds and Interest Coupons surrendered for new Preferred and Common Stock (except a small amount, for which indemnity was provided) and bonds were cancelled..... | | | | 10,950,000.00 |
| | New O&CRR Co. 1st Mortgage Bonds were paid and cancelled.. | | | | 2,000,000.00 |

| Date | Transactions | Stocks | Bonds | Floating Debt | Net Investment |
|---------|--|--------|--------------|---------------|----------------|
| | Reorganization Discounts and commissions on \$1,414,000.00 Capital Stock sold..... | | | | 887,712.39 |
| | Reorganization Expenses paid in Capital Stock | | | | 435,000.00 |
| | Reorganization Expenses paid in Cash | | | | 208,439.36 |
| 8/20/81 | Two West Side notes cancelled... | | | 1,000,000.00 | |
| | Interest thereon cancelled..... | | | 612,796.34 | |
| | West Side 1st Mortgage Bonds cancelled | | 4,395,000.00 | | |
| | West Side 2nd Mortgage Bonds cancelled | | 300,000.00 | | |

| Date | Transactions | Stocks | Bonds | Floating Debt | Net Investment |
|-------|--|---------------|--------------|---------------|----------------|
| | Interest on 2nd Mortgage Bonds cancelled | | | 97,230.00 | |
| | WORR Mortgage to Northwestern Construction Co. cancelled... | | 1,520,564.05 | | |
| | West Side note to Northwestern Construction Company cancelled. | | | 13,006.82 | |
| <hr/> | | | | | |
| | The situation being..... | 19,000,000.00 | 6,000,000.00 | 1,000,000.00 | 19,674,206.43 |

US Bill of Complaint (P 28) alleges that all of the then existing indebtedness was fully paid and discharged. This is confirmed by the O&C records, except as to the amount which was to have been paid to Ben Halladay & Co.,

| Date | Transactions | Stocks | Bonds | Floating Debt | Net Investment |
|----------|--|--------|--------------|---------------|----------------|
| | shown herein as Floating Debt \$1,000,000.00. | | | | |
| 2/5/83 | O&CRR Co. issued additional General Mortgage Bonds..... | | 1,000,000.00 | | 1,000,000.00 |
| | U S Bill alleges (P 30) that this issue and that of 5/7/81 produced approximately \$5,000,000.00. | | | | |
| 6/27/84 | In settlement with Oregon & Transcontinental Company, O&C RR Co. agreed to pay on account of construction, within six months | | | 446,000.00 | 446,000.00 |
| Prior to | | | | | |
| 3/7/87 | O&CRR Co. had issued bonds under the 2nd Mortgage of 5/26/83. | | 2,610,000.00 | | 2,610,000.00 |

| Date | Transactions | Stocks | Bonds | Floating Debt | Net Investment |
|----------|---|--------|---------------|---------------|----------------|
| Prior to | | | | | |
| 6/27/88 | O&CRR Co. had additionally issued under the General Mortgage of 6/1/81 | | 2,020,000.00 | | 2,020,000.00 |
| 7/1/87 | O&CRR Co. made its mortgage to the Union Trust Company and issued bonds | | 20,000,000.00 | | 20,000,000.00 |
| 6/27/88 | All outstanding bonds of the General Mortgage of 6/1/81 were cancelled | | | | |
| | | | 9,020,000.00 | | |
| | All outstanding bonds of the 2nd mortgage of 5/26/83 were cancelled | | | | |
| | | | 2,610,000.00 | | |

| Date | Transactions | Stocks | Bonds | Floating Debt | Net Investment |
|----------|--|---------------|---------------|------------------|----------------|
| Prior to | | | | | |
| 9/4/08 | O&CRR Co. had paid through sales of Granted Lands, bonds of the 7/1/87 mortgage..... | | 2,500,000.00 | | |
| | Leaving outstanding as alleged in the U S Bill (P 38) \$17,500,000.00 | | | | |
| | The situation then being..... | 19,000,000.00 | 17,500,000.00 | (x) 1,446,000.00 | 45,750,206.43 |

(x) It is presumed that the items constituting this amount have been taken care of in some manner, but the O&CRR Co. records do not show how.

DEFENDANTS' EXHIBIT 381

is circular No. 208, "The Three Year Homestead Law," issued by the Department of the Interior February 13, 1913, addressed to the Commissioner of the General Land Office.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

SUMMARY of PATENTS

to

OREGON AND CALIFORNIA RAILROAD COMPANY.

—0—

(No patents have been issued to)
(Oregon Central Railroad Company)

First:

PATENTS under Act of
July 25, 1866, and amend-
ments thereto.

O. & C. R. R. Co., et al.

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|-----------------------------|---------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Clackamas, | 5/9/71 | 1 | 32,517.21 | | |
| and | Multnomah, | | | | | |
| Jun. 25, 1868 | Yamhill, Wash- ington | | | | | |
| Jul. 25, 1866 | Benton, Polk, | 7/12/71 | 2 | 72,417.65 | 47,829.81 | |
| and | Linn, Clack- | | | | | |
| Jun. 25, 1868 | amas, Marion, | | | | | |
| | Multnomah, | | | | | |
| | Washington | | | | | |
| | Yamhill. | | | | | |
| Total under acts of 1866 & 1868 | | | | | | 152,764.67 |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | |
|---|-----------------------------|---------|-------------|-----------|----------------|
| | | | | Primary | Indemnity |
| | | | | | Acres Total |
| Jul. 25, 1866 | Benton, Coos, | | | | |
| Jun. 25, 1868 | Lane, Linn, | 5/29/72 | 3 | 42,729.16 | 26,332.47 |
| and | Douglas, | | | | |
| Apr. 10, 1869 | | | | | |
| Jul. 25, 1866 | | | | | |
| Jun. 25, 1868 | Clackamas | 6/22/76 | 4 | 8,070.46 | 6,559.21 |
| and | Multnomah, | | | | |
| Apr. 10, 1869 | | | | | |
| Jul. 25, 1866 | Benton, Lane | 6/18/77 | 5 | 86,622.71 | |
| Jun. 25, 1868 | Polk, Linn, | | | | |
| and | Clackamas, | | | | |
| Apr. 10, 1869 | Multnomah, | | | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|--|---------|-------------|------------------|---|----------------|
| | Marion, Yamhill, Washington. | | | | | 152,764.67 |
| Jul. 25, 1866 | Forward, Benton, Coos, | 2/20/93 | 6 | | 123,475.82 | |
| Jun. 25, 1868 and Apr. 10, 1869 | Clackamas, Douglas, Lane Lincoln, Linn, Marion, Polk, Tillamook, | | | | (Includes 6363.23 acres of West Side Primary Lands not within East Side grant limits) | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | | Total |
|---|---|--------|-------------|---|-----------|-------|
| | | | | Primary | Indemnity | |
| | Washington, Yamhill, | | | | | |
| Jul. 25, 1866 | Coos, Curry | 3/3/93 | 7 | | 71,081.41 | |
| Jun. 25, 1868 and Apr. 10, 1869 | Douglas, Lane, Josephine, Linn, Marion Polk, Yamhill, Tillamook | | | (Includes 240 acres of West side Primary lands not within East Side Grant limits) | | |
| Jul. 25, 1866 | Benton, | 3/3/93 | 8 | | 97,929.67 | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|-----------------------------|------|-------------|------------------|--------------------|----------------|
| Jun. 25, 1868 | Jackson, Lane | | | | | |
| and | Klamath, | | | | | |
| Apr. 10, 1869 | Douglas, | | | | | |
| | Yamhill | | | | | |
| <hr/> | | | | | | |
| Total under acts of July | | | | | | |
| 25, 1866, June 25, | | | | | | |
| 1868, and April | | | | | | |
| 10, 1869, | | | | | | 462,800.91 |
| Total under patents | | | | | | |
| reciting Acts in ad- | | | | | | |
| dition to Act of July 25, 1866 | | | | | | 615,565.58 |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | |
|---|--|---------|-------------|------------|----------------|
| | | | | Primary | Indemnity |
| | | | | | Acres Total |
| Jul. 25, 1866 | Coos, Curry, Douglas, Jackson, Josephine, Klamath | 6/11/94 | 9 | | 152,409.43 |
| Jul. 25, 1866 | Benton, Coos, Douglas, Lane, Jackson, Linn, Josephine, Klamath, Marion, Yamhill, Washington. | 12/3/94 | 10 | 229,943.52 | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|---|---------|-------------|-------------------|--------------------|----------------|
| Jul. 25, 1866 | Benton, Coos, Curry, Klamath, Douglas, Lane, Jackson, Linn, Lincoln Yamhill. | 4/23/95 | 11 | | 52,397.39 | |
| | | | | <u>229,943.52</u> | <u>204,806.82</u> | 615,565.58 |
| | Forward, | | | | | 615,565.58 |
| | Forward, | | | | | 615,565.58 |
| Jul. 25, 1866 | Josephine, Jackson. | 4/24/95 | 12 | | 11,455.62 | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | | Acres Indemnity | Acres Total |
|---|------------------------------------|---------|-------------|-----------|-----------|--------------------|----------------|
| | | | | Primary | | | |
| Jul. 25, 1866 | Douglas, Josephine, Jackson. | 4/27/95 | 13 | 83,889.76 | | | |
| Jul. 25, 1866 | Klamath | 5/14/95 | 14 | | 480. | | |
| Jul. 25, 1866 | Benton, Polk Linn, Yamhill | 5/14/95 | 15 | | 16,942.26 | | |
| Jul. 25, 1866 | Douglas, Jackson. | 10/9/95 | 19 | | 10,464.96 | | |
| Jul. 25, 1866 | Douglas, Josephine, Jackson. | 10/9/95 | 20 | | 11,147.91 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|--|----------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Lane, Douglas Coos, Benton. | 12/13/95 | 22 | | 13,528.49 | |
| Jul. 25, 1866 | Douglas | 12/13/95 | 23 | | 4,194.12 | |
| Jul. 25, 1866 | Lane, Klamath, Douglas, Benton, Jackson | 12/16/95 | 24 | 150,269.98 | | |
| Jul. 25, 1866 | Lane, Klamath, Linn, Douglas Benton, Jackson. | 12/17/95 | 25 | 203,947.91 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres | |
|---|-------------------------------|---------|-------------|------------------|-----------|-------|
| | | | | | Indemnity | Total |
| Jul. 25, 1866 | Douglas, Coos. | 1/20/96 | 27 | 21,813.34 | | |
| Jul. 25, 1866 | Lane, | 1/21/96 | 29 | 640. | | |
| Jun. 22, 1874 | Marion, | 2/12/96 | 31 | | (80.) | |
| lieu land in even section. | | | | | | |
| Jul. 25, 1866 | Lane, Douglas, Jackson. | 2/21/96 | 32 | 952.19 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|-----------------------------|---------|-------------|------------------|--------------------|----------------|
| | | | | | | |
| Jul. 25, 1866 | Benton, Polk | | | | | |
| | Linn, Marion, | 3/12/96 | 34 | 4,162.53 | | |
| | Yamhill. | | | | | |
| Jul. 25, 1866 | Douglas | 3/13/96 | 35 | | 160. | 615,565.58 |
| | Forward. | | | | | |
| | | | | 695,619.23 | 273,180.18 | |
| | Forward. | | | 695,619.23 | 273,180.18 | 615,565.58 |
| Jul. 25, 1866 | Clackamas, | 3/14/96 | 36 | | | |
| | Marion. | | | | 26,938.51 | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|------------------------------------|---------|-------------|------------------|--------------------|----------------|
| | | | | | | |
| Jul. 25, 1866 | Lane, Douglas, Josephine, | 3/17/96 | 38 | 107,585.96 | | |
| | Jackson | | | | | |
| Jul. 25, 1866 | Lane, Douglas, | 3/16/96 | 39 | 59,098.60 | | |
| | Jackson. | | | | | |
| Jul. 25, 1866 | Jackson. | 4/17/96 | 41 | 1,601.38 | | |
| Jul. 25, 1866 | Douglas, Josephine, Jackson. | 5/6/96 | 42 | 259,351.46 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres | |
|---|---|--------|-------------|------------------|-----------|-------|
| | | | | | Indemnity | Total |
| Jul. 25, 1866 | Jackson, Josephine. | 5/5/96 | 43 | 112,479.84 | | |
| Jul. 25, 1866 | Lane, Douglas, Josephine, Jackson | 5/2/96 | 44 | 13,417.07 | | |
| Jul. 25, 1866 | Polk, | 5/2/96 | 45 | | 4,135.80 | |
| Jul. 25, 1866 | Lane Josephine | 5/7/96 | 46 | | 5,185.00 | |
| Jul. 25, 1866 | Linn | 5/7/96 | 47 | | 6,366.90 | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | | Acres Total |
|---|-----------------------------|---------|-------------|-----------|-----------|----------------|
| | | | | Primary | Indemnity | |
| Jul. 25, 1866 | Klamath | 5/12/96 | 48 | 638.24 | | |
| Jul. 25, 1866 | Coos, Jackson. | 5/20/96 | 49 | | 242.60 | |
| Jul. 25, 1866 | Lane | 7/10/96 | 51 | | 10,534.71 | |
| Jul. 25, 1866 | Linn, | 7/15/96 | 52 | 31.82 | | |
| Jul. 25, 1866 | Marion, | 7/23/96 | 53 | | 2,037.09 | |
| Jul. 25, 1866 | Douglas, | 7/23/96 | 54 | | 11,461.44 | |
| Jul. 25, 1866 | Lane, | 7/23/96 | 55 | | 5,868.14 | |
| Jul. 25, 1866 | Lane, Douglas, | 7/23/96 | 56 | 14,884.84 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|-----------------------------|----------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Lane, | 8/19/96 | 57 | | 402.01 | |
| Jul. 25, 1866 | Douglas, | 8/19/96 | 58 | | 156.52 | |
| Jul. 25, 1866 | Douglas, | 10/13/96 | 61 | | 5,938.39 | |
| Forward. | | | | | | |
| patent summary | | | | | | |
| | | | | 1,264,708.44 | 352,447.29 | 615,565.58 |
| | | | | 1,264,708.44 | 352,447.29 | 615,565.58 |
| Jul. 25, 1866 | Douglas | 10/22/96 | 63 | | | |
| | Josephine | | | 29,156.92 | | |
| Jul. 25, 1866 | Douglas | 10/23/96 | 64 | | 120. | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | | Total |
|---|-----------------------------|----------|-------------|----------|-----------|-------|
| | | | | Primary | Indemnity | |
| Jul. 25, 1866 | Douglas | 11/24/96 | 66 | | | |
| | Josephine | | | | 110. | |
| Jul. 25, 1866 | Lane, Linn, | 12/ 7/96 | 67 | | 400. | |
| Jul. 25, 1866 | Douglas | 12/ 8/96 | 68 | 3,425.80 | | |
| Jul. 25, 1866 | Benton, Polk | 12/ 7/96 | 69 | | | |
| | Marion, | | | | | |
| | Yamhill, | | | 352.89 | | |
| | Washington. | | | | | |
| Jul. 25, 1866 | Benton, Polk, | 1/30/97 | 70 | 190.17 | | |
| | Marion. | | | | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|----------------------------------|---------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Polk | 1/30/97 | 71 | | 440. | |
| | Tillamook | | | | | |
| Jul. 25, 1866 | Jackson | 2/30/97 | 72 | 200.51 | | |
| Jul. 25, 1866 | Lane, Douglas, Polk, Yamhill. | 2/4/97 | 73 | | 2,010.05 | |
| Jul. 25, 1866 | Polk | 2/16/97 | 74 | 20. | | |
| Jul. 25, 1866 | Linn | 2/26/97 | 77 | | 40. | |
| Jul. 25, 1866 | Lane, Linn, Douglas | 2/27/97 | 78 | 120. | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|--|--------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Douglas, Josephine, Jackson | 3/3/97 | 80 | 1,054.16 | | |
| Jul. 25, 1866 | Lane, Douglas, 3/ Linn, Jackson, Josephine, Coos. | 3/3/97 | 81 | | 3,138.95 | |
| Jul. 25, 1866 | Yamhill | 5/6/97 | 83 | | 40. | |
| Jul. 25, 1866 | Lane, Douglas, 5/ Benton, Jackson. | 6/6/97 | 84 | | 1,199.53 | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|--|---------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Linn, | 5/17/97 | 85 | | 160. | |
| Patent Summary | | | | | | |
| | Forward | | | 1,299,228.89 | 360,105.82 | 615,565.58 |
| Jul. 25, 1866 | Jackson Douglas, | 5/17/97 | 86 | | 400. | |
| Jul. 25, 1866 | Coos, Curry, Jackson | 6/15/97 | 87 | | 960. | |
| Jul. 25, 1866 | Lane, Douglas, Josephine, Jackson. | 7/3/97 | 88 | 9,207.77 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|--|----------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Lane, Douglas, Josephine. | 7/ 9/97 | 89 | | 1,473.60 | |
| Jul. 25, 1866 | Lane, Jackson, Douglas, Josephine, | 9/ 2/97 | 90 | 1,315.28 | | |
| Jul. 25, 1866 | Josephine | 10/ 5/97 | 91 | | 1,680.41 | |
| Jul. 25, 1866 | Douglas, Josephine, Jackson. | 10/ 5/97 | 92 | 5,579.59 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|--|----------|-------------|------------------|--------------------|----------------|
| | Lane, Douglas, Josephine, Jackson. | 11/16/97 | 93 | 3,957.49 | | |
| Jul. 25, 1866 | Douglas | 11/16/97 | 94 | 73.36 | | |
| Jul. 25, 1866 | Linn | 12/ 4/97 | 95 | | 2,241.55 | |
| Jul. 25, 1866 | Douglas, Josephine, Jackson, | 12/ 4/97 | 96 | 1,529.48 | | |
| Jul. 25, 1866 | Benton, Jackson, | 12/ 4/97 | 97 | | 80. | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | | Acres | |
|---|-----------------------------|----------|-------------|--------------|------------|------------|-------|
| | | | | Primary | Indemnity | Total | Total |
| | Forward | | | 1,341,779.60 | 367,213.21 | 615,565.58 | |
| Jul. 25, 1866 | Josephine | 3/ 3/98 | 103 | 160. | | | |
| Jul. 25, 1866 | Jackson | 5/27/98 | 105 | 8,893.26 | | | |
| Jul. 25, 1866 | Jackson | 6/29/98 | 106 | 442.28 | | | |
| Jul. 25, 1866 | Josephine | 6/29/98 | 107 | | 22.20 | | |
| Jul. 25, 1866 | Linn, | 8/31/98 | 108 | | 440. | | |
| Jul. 25, 1866 | Douglas | 9/28/98 | 109 | 5,787.48 | | | |
| Jul. 25, 1866 | Jackson | 10/14/98 | 100 | 181.06 | | | |
| Jul. 25, 1866 | Douglas | 10/15/98 | 111 | | 5,898.07 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|---|----------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Josephine, Jackson | 11/11/98 | 112 | 14,137.74 | | |
| Jul. 25, 1866 | Douglas | 12/30/98 | 113 | | 13,012.36 | |
| Jul. 25, 1866 | Coos, | 2/ 2/99 | 114 | | 14,082.84 | |
| Jul. 25, 1866 | Jackson, | 2/23/99 | 115 | 309.95 | | |
| Jul. 25, 1866 | Benton, Polk, Linn, Marion, Washington, Yamhill, Clackamas. | 2/25/99 | 116 | 1,467.85 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|-----------------------------|---------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Lane, Douglas. | 3/20/99 | 117 | 19,582.14 | | |
| Jul. 25, 1866 | Klamath, Lane, Jackson | 3/29/99 | 118 | 766.33 | | |
| Jul. 25, 1866 | Lane, | 4/18/99 | 119 | 362.89 | | |
| Jul. 25, 1866 | Klamath | 4/20/99 | 120 | | 80. | |
| Jul. 25, 1866 | Jackson | 5/11/99 | 122 | 360. | | |
| Jul. 25, 1866 | Lane | 5/17/99 | 123 | 567.11 | | |
| Jul. 25, 1866 | Linn, | 5/22/99 | 124 | 2,863.39 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|------------------------------------|---------|-------------|---------------------|--------------------|-------------------|
| Jul. 25, 1866 | Douglas, Jackson, | 6/ 3/99 | 125 | 7,040.40 | | |
| | Forward | | | <u>1,404,701.48</u> | <u>400,748.66</u> | <u>615,565.58</u> |
| Patent Summary | | | | | | |
| | Forward | | | <u>1,404,701.48</u> | <u>400,748.68</u> | <u>615,565.58</u> |
| Jul. 25, 1866 | Douglas, Josephine, Jackson. | 6/26/99 | 126 | 9,186.07 | | |
| Jul. 25, 1866 | Jackson | 6/30/99 | 127 | 969.58 | | |
| Jul. 25, 1866 | Lincoln | 7/10/99 | 128 | | 11,585.23 | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | |
|---|-----------------------------|---------|-------------|----------|----------------|
| | | | | Primary | Indemnity |
| | | | | | Acres Total |
| Jul. 25, 1866 | Lane, Benton, | 7/21/99 | 129 | | 6,914.23 |
| Jul. 25, 1866 | Jackson, | 8/10/99 | 130 | 400.00 | |
| Jul. 25, 1866 | Jackson, | 8/22/99 | 131 | 4,552.04 | |
| Jul. 25, 1866 | Lane, Jackson, Douglas. | 8/22/99 | 132 | 365.20 | |
| Jul. 25, 1866 | Jackson, Douglas, | 8/22/99 | 133 | 2,428.66 | |
| Jul. 25, 1866 | Jackson, | 8/22/99 | 134 | 2,676.33 | |
| Jul. 25, 1866 | Douglas, | 9/7/99 | 135 | 120.00 | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | |
|---|------------------------------------|----------|-------------|----------|-----------|
| | | | | Primary | Indemnity |
| | | | | | Total |
| Jul. 25, 1866 | Lane, Jackson, | 9/14/99 | 136 | 751.93 | |
| Jul. 25, 1866 | Lane, Klamath, Douglas, | 11/29/99 | 137 | 560.28 | |
| Jul. 25, 1866 | Benton, Polk, Clackamas. | 11/29/99 | 138 | 72.67 | |
| Jul. 25, 1866 | Lane, Douglas, | 12/ 4/99 | 139 | 2,630.10 | |
| Jul. 25, 1866 | Josephine | 12/ 4/99 | 140 | | 40.00 |
| Jul. 25, 1866 | Douglas, Josephine, Jackson. | 12/ 6/99 | 141 | 1,131.36 | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | | Acres | |
|---|------------------------------------|----------|-------------|--------------|------------|-------|------------|
| | | | | Primary | Indemnity | Total | Total |
| Jul. 25, 1866 | Douglas, | 12/ 6/99 | 142 | 481.30 | | | |
| Jul. 25, 1866 | Douglas, Josephine, Jackson. | 12/ 6/99 | 143 | 1,616.51 | | | |
| Jul. 25, 1866 | Douglas | 12/ 6/99 | 144 | 200.00 | | | |
| Jul. 25, 1866 | Douglas | 12/ 6/99 | 145 | 26,582.12 | | | |
| Jul. 25, 1866 | Lane | 12/ 6/99 | 146 | | 2,541.95 | | |
| Jul. 25, 1866 | Coos | 12/12/99 | 147 | | 11,312.16 | | |
| Forward | | | | 1,459,425.63 | 433,142.25 | | 615,565.58 |
| Patent Summary | | | | | | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | | Acres Total |
|---|----------------------------------|----------|-------------|--------------|------------|----------------|
| | | | | Primary | Indemnity | |
| | Forward | | | 1,459,425.63 | 433,142.25 | 615,565.58 |
| Jul. 25, 1855 | Jackson | 12/12/99 | 148 | 953.65 | | |
| Jul. 25, 1855 | Douglas, Jackson. | 12/15/99 | 149 | 243.34 | | |
| Jul. 25, 1855 | Douglas Jackson Josephine. | 12/18/99 | 150 | 2,348.99 | | |
| Jul. 25, 1855 | Coos | 12/20/99 | 151 | | 11,042.33 | |
| Jul. 25, 1855 | Josephine Jackson. | 12/26/99 | 152 | 1,875.37 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|------------------------------------|---------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1855 | Douglas, Josephine, Jackson. | 1/ 5/00 | 153 | 1,689.20 | | |
| Jul. 25, 1855 | Linn, | 1/29/00 | 154 | | 19,022.15 | |
| Jul. 25, 1855 | Douglas, Josephine, Jackson. | 4/11/00 | 155 | 883.13 | | |
| Jul. 25, 1855 | Lane | 4/27/00 | 156 | | 320.44 | |
| Jul. 25, 1855 | Douglas, Josephine, Jackson. | 5/ 8/00 | 157 | 12,642.32 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | | Acres Indemnity | Acres Total |
|---|-----------------------------|---------|-------------|----------|----------|--------------------|----------------|
| | | | | Primary | | | |
| Jul. 25, 1855 | Jackson | 5/ 8/00 | 158 | 80. | | | |
| Jul. 25, 1855 | Josephine | 8/21/00 | 159 | | 40. | | |
| Jul. 25, 1855 | Linn | 8/16/00 | 160 | | 160. | | |
| Jul. 25, 1855 | Jackson | 8/16/00 | 161 | | 800.58 | | |
| Jul. 25, 1855 | Douglas Josephine | 8/16/00 | 162 | 60. | | | |
| Jul. 25, 1855 | Clackamas | 9/13/00 | 163 | | 7,143.51 | | |
| Jul. 25, 1855 | Clackamas Multnomah | 8/ 8/01 | 164 | 3,418.03 | | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|--------------------------------|---------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1855 | Multnomah | 8/ 8/01 | 165 | 320. | | |
| | Forward | | | 1,483,939.66 | 471,671.26 | 615,565.58 |
| Patent Summary. | | | | | | |
| | Forward | | | 1,483,939.66 | 471,671.26 | 615,565.58 |
| Jul. 25, 1866 | Polk, Marion, Linn, Yamhill | 8/ 8/01 | 166 | 162.72 | | |
| Jul. 25, 1866 | Washington, | 8/ 8/01 | 167 | 80. | | |
| Jul. 25, 1866 | Jackson, Douglas, Lane. | 8/ 8/01 | 168 | 3,117.85 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | | |
|---|-------------------------------------|----------|-------------|----------|-----------|-------|
| | | | | Primary | Indemnity | Total |
| Jul. 25, 1866 | Douglas, Jackson. | 8/ 8/01 | 169 | 2,043.90 | | |
| Jul. 25, 1866 | Klamath | 8/ 8/01 | 170 | | 198.61 | |
| Jul. 25, 1866 | Linn | 8/ 8/01 | 171 | | 2,360.11 | |
| Jul. 25, 1866 | Yamhill, Washington. | 8/ 08/01 | 172 | | 48.77 | |
| Jul. 25, 1866 | Washington, Yamhill, Lincoln. | 8/ 8/01 | 173 | | 560.00 | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|--|---------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Jackson, Douglas, Lane, Coos, Curry. | 8/ 8/01 | 174 | | 2,158.37 | |
| Jul. 25, 1866 | Marion | 8/ 8/01 | 175 | | 536.29 | |
| Jul. 25, 1866 | Multnomah | 8/ 8/01 | 176 | | 4,295.88 | |
| Jul. 25, 1866 | Multnomah Clackamas | 8/ 8/01 | 177 | | 41,162.07 | |
| Jun. 22, 1874 and | Multnomah Linn | 1/24/02 | 178 | | (362.63) | |
| Jul. 25, 1866 Lieu Land | Marion | | | | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|-----------------------------------|---------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Douglas Josephine, Jackson. | 5/28/02 | 179 | 3,771.66 | | |
| Jul. 25, 1866 | Multnomah | 6/21/02 | 180 | | (199.11) | |
| Jun. 22, 1874 | Marion | | | | | |
| lieu land in even sections. | | | | | | |
| Jul. 25, 1866 | Clackamas | 9/29/02 | 181 | 1,094.40 | | |
| Jul. 25, 1866 | Linn, Jackson, Josephine | 9/29/02 | 182 | | | 397.09 |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres | |
|---|----------------------------------|----------|-------------|------------------|------------|------------|
| | | | | | Indemnity | Total |
| Jul. 25, 1866 | Clackamas | 9/29/02 | 183 | | 8,403.44 | |
| | Forward | | | 1,494,214.19 | 531,791.89 | 615,565.58 |
| Patent Summary. | | | | | | |
| | Forward | | | 1,494,214.19 | 531,791.89 | 615,565.58 |
| Jul. 25, 1866 | Josephine Jackson Douglas. | 12/ 6/02 | 184 | 1,298.07 | | |
| Jul. 25, 1866 | Linn, | 12/ 6/02 | 185 | | 328.52 | |
| Jul. 25, 1866 | Klamath, | 12/ 6/02 | 186 | | 6,312.92 | |
| Jul. 25, 1866 | Douglas | 12/ 6/02 | 187 | | 3,898.96 | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|-----------------------------|----------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Lane, Douglas | 12/ 6/02 | 188 | | 10,099.40 | |
| Jul. 25, 1866 | Lane | 2/18/03 | 189 | | (40.) | |
| Jun. 22, 1874 | | | | | | |
| lieu land | | | | | | |
| but in odd | | | | | | |
| section. | | | | | | |
| Jul. 25, 1866 | Josephine, Douglas. | 2/18/03 | 190 | | 19,876.97 | |
| Jul. 25, 1866 | Lane, Jackson, Coos, | 3/16/03 | 191 | 513.28 | | |
| Jul. 25, 1866 | Yamhill | 3/16/03 | 192 | 40. | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|-----------------------------|---------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Clackamas, Polk. | 3/20/03 | 193 | | 1,121.35 | |
| Jul. 25, 1866 | Klamath | 3/20/03 | 194 | | 4,190.16 | |
| Jul. 25, 1866 | Coos | 3/20/03 | 195 | | 240. | |
| Jul. 25, 1866 | Clackamas Multnomah. | 6/23/03 | 198 | | 10,316.32 | |
| Jul. 25, 1866 | Jackson, | 9/12/03 | 199 | 100. | | |

NOTE
Following
are without
mineral re-
striction.

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|---|---------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Klamath | 1/12/04 | 200 | | 121.20 | |
| | Yamhill | | | | | |
| Jul. 25, 1866 | Douglas | 2/ 9/04 | 201 | 89.17 | | |
| Jul. 25, 1866 | Lane, Douglas, Linn, Coos, Jackson. | 6/14/04 | 202 | 27,383.76 | | |
| | Forward | | | 1,523,638.47 | 588,297.69 | 615,565.58 |
| Patent Summary | | | | | | |
| | Forward | | | 1,523,638.47 | 588,297.69 | 615,565.58 |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres | |
|---|--|----------|-------------|------------------|-----------|-------|
| | | | | | Indemnity | Total |
| Jul. 25, 1866 | Douglas, Josephine. | 10/28/04 | 203 | 11,744.95 | | |
| Jul. 25, 1866 | Lane, Linn. | 1/26/05 | 204 | | 1,922.44 | |
| Jul. 25, 1866 | Douglas, Coos, Josephine. | 2/ 3/05 | 205 | 20,006.55 | | |
| Jul. 25, 1866 | Polk | 4/27/05 | 206 | | 160.55 | |
| Jul. 25, 1866 | Klamath, Douglas, Clackamas, Jackson. | 5/ 5/05 | 207 | 791.69 | | |
| Jul. 25, 1866 | Lane, Douglas, | 6/ 5/05 | 208 | 2,677.40 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|-----------------------------|----------|-------------|------------------|--------------------|----------------|
| Jul. 25, 1866 | Lane | 8/15/05 | Sup 3 | 80. | | |
| Jul. 25, 1866 | Douglas, | 11/ 9/05 | 209 | 151.22 | | |
| Jul. 25, 1866 | Washington | 11/ 9/05 | 210 | | 38.82 | |
| Jul. 25, 1866 | Josephine | 12/ 7/06 | 211 | 20. | | |
| <hr/> | | | | | | |
| Total primary, patented under act of July 25, 1866 only | | | | 1,559,120.28 | | |
| Total indemnity patented under act of 1866 only | | | | | 590,419.50 | |
| <hr/> | | | | | | |
| Total under patents mentioning only act of July 25, 1866 | | | | | | 2,149,539.78 |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|--|-----------------------------|---------|-------------|------------------|--------------------|----------------|
| <hr/> | | | | | | |
| Total acres patented under act of July 25, 1866. | | | | | | |
| and acts amendatory thereof, prior to Sept. 4, 1908. | | | | | | |
| Jul. 25, 1866 | Douglas | 6/21/09 | Sup. 3 | | 161.75 | 2,765,105.36 |
| Jun. 25, 1868 and | | | | | | 161.75 |
| Apl. 10, 1869 | | | | | | <hr/> |
| Forward (Act of 1866) | | | | | | |
| Second: | | | | | | |
| PATENTS under Act of | | | | | | |
| May 4, 1870. | | | | | | |
| Total | | | | | | 2,765,267.11 |
| | | | | | | 2,765,267.11 |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | | Acres Total |
|---|--|----------|-------------|-----------|-----------|----------------|
| | | | | Primary | Indemnity | |
| May 4, 1870 | Tillamook Columbia | 10/ 9/95 | 16 | | 12,349.64 | |
| May 4, 1870 | Multnomah | 10/ 9/95 | 17 | 46,091.14 | | |
| May 4, 1870 | Yamhill Columbia (Includes 249.07 acres of East side Indemnity lands) Tillamook Washington. | | | | | |
| May 4, 1870 | Clarke Co. (Wn.) | 10/ 9/95 | 18 | 1,630.11 | | |
| May 4, 1870 | Clarke Co. (Wn.) | 10/ 9/95 | 21 | 40.00 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres | | |
|---|-----------------------------|----------|-------------|-----------|-----------|-------|
| | | | | Primary | Indemnity | Total |
| May 4, 1870 | Washington, Tillamook | 12/14/95 | 26 | 32,968.11 | | |
| (Pat. 26 includes 80 acres of East Side Indemnity lands) | | | | | | |
| May 4, 1870 | Washington, Columbia. | 1/20/96 | 28 | 994.91 | | |
| May 4, 1870 | Clarke (Wn.) | 1/21/96 | 30 | 40.00 | | |
| May 4, 1870 | Tillamook | 2/21/96 | 33 | | 13,003.26 | |
| May 4, 1870 | Columbia | 3/16/96 | 37 | 160.00 | | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|--|-----------------------------|----------|-------------|------------------|--------------------|----------------|
| May 4, 1870 | Tillamook | 4/11/96 | 40 | 1,123.39 | | |
| May 4, 1870 | Tillamook | 6/ 6/96 | 50 | | 8,201.22 | |
| May 4, 1870 | Tillamook | 9/30/96 | 59 | | 1,933.78 | |
| May 4, 1870 | Tillamook | 10/13/96 | 60 | | 655.80 | |
| May 4, 1870 | Tillamook | 10/17/96 | 62 | 5,186.92 | | |
| (Pat. 61 includes 320 acres of East side Indemnity lands) | | | | | | |
| May 4, 1870 | Tillamook | 10/23/96 | 65 | | 988.96 | |
| Forward | | | | 88,194.58 | 37,172.66 | 2,765,267.11 |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|--|---------|-------------|------------------|--------------------|----------------|
| Patent Summary | | | | | | |
| | Forward | | | 88,194.58 | 37,172.66 | 2,765,267.11 |
| May 4, 1870 | Tillamook | 2/16/97 | 75 | | 400.00 | |
| May 4, 1870 | Multnomah Washington. | 2/16/97 | 76 | 228.00 | | |
| May 4, 1870 | Yamhill, | 3/ 2/97 | 79 | 1,680.00 | | |
| | Tillamook. (Pat. 79 includes 1680 acres of East side indemnity lands.) | | | | | |
| May 4, 1870 | Tillamook | 5/ 6/97 | 82 | | 80.00 | |
| May 4, 1870 | Columbia | 3/ 8/98 | 104 | | 72.75 | |
| May 4, 1870 | Tillamook | 5/11/99 | 121 | | 520.00 | |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|-----------------------------|---------|-------------|------------------|--------------------|----------------|
| May 4, 1870 | Multnomah | 3/20/03 | 196 | 200.00 | | |
| | Columbia | | | | | |
| May 4, 1870 | Tillamook | 3/20/03 | 197 | | 70.14 | |
| Total primary | | | | | | |
| under act May 4, 1870. | | | | 90,302.58 | | |
| Total indemnity | | | | | | |
| under act May 4, 1870 | | | | | 38,315.55 | |
| Total under | | | | | | |
| Act May 4, 1870. | | | | | | 128,618.13 |

| Acts recited in patent and remarks. | County where recorded | Date | Num- ber | Acres Primary | Acres Indemnity | Acres Total |
|---|-----------------------------|------|-------------|------------------|--------------------|----------------|
| Total under Act of June 22, 1874 allowing selection of land in even sections, where base was wrongfully withheld (also re- citing Act of July 25, 1866) | | | | | | |
| | | | | | | 681.74 |

Total acres patented to O. & C. R.
R. Co. under all grants, per rec-
ords of counties of Oregon.

2,894,566.98

TMcA
L. H.

Patent summary.

DEFENDANTS' EXHIBIT 383

is certified copy of reports of Commissioners appointed to examine, and report upon the first and second sections of the Oregon Central Railroad Company (West Side), with the action of the President endorsed thereon, and reports of Commissioners appointed to examine and report upon the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth sections of the Oregon & California Railroad from Portland to the Oregon and California state line, with the action of the President endorsed thereon.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 384

is a certified copy of the affidavit of H. Villard, of date January 8, 1883, which, omitting certificate of Recorder of the General Land office as follows: C

M. L. 268839— 1

State of New York)
(ss.
City & County of New York)

Henry Villard, having been duly sworn says:

That he is the President of the Oregon and California Railroad Company, which Company has succeeded to and become duly invested with and is now possessed of and entitled to all the grants, rights, fran-

chises and privileges conferred upon the Oregon Company by chapter CCXLII of the Laws of Congress, 1866 (14 U. S. Stat. 239), entitled—"An Act granting Lands to aid in the construction of a Railroad and Telegraph Line from the Central Pacific Railroad, in California, to Portland, in Oregon"—Approved July 25, 1866, and the Acts amendatory thereof; and upon the Oregon Central Railroad Company, by Chapter LXIX, Laws of Congress, 1870 (16 U. S. Stat. 94), entitled—"An Act granting lands to aid in the construction of a Railroad and Telegraph Line from Portland to Astoria and McMinnville, in the State of Oregon"—approved May 4, 1870.

That there has been already accepted and approved by the United States, as duly constructed under the provisions of the above recited Acts, those parts of said Oregon and California Railroad situated in Oregon, between East Portland and Roseburg, being 198 miles in length, and between Portland and St. Joseph and McMinnville, being about 50 miles in length.

That ever since the summer of 1881, and fully one year before the first day of December, Eighteen hundred and eighty-two, the work of duly constructing, completing and equipping the remaining parts of said railroad as defined in the above mentioned Acts, has been prosecuted by said Company continuously, actively and in perfect good faith, at an actual expenditure of large sums of money (several millions of dollars in amount), and in conformity with the will and de-

sire of Congress, as expressed in said Acts, that said lines of railroad should be speedily and thoroughly completed. And that, within the time above mentioned, substantial progress has been made towards the completion of said lines of said company, inasmuch as at least 45 miles of new road have, within that time, been constructed, completed and equipped in a thorough and first-class manner, and said new mileage is now in full operation as part of the railroad system of said Company; and at least 20 miles additional to the above are now partially constructed, and further construction still continues.

That by reason of the mountainous nature of the country through which said lines are being constructed, and on account of other natural obstructions, only overcome with the greatest difficulty and labor and at enormous expense, the above mentioned mileage is all that could be completed, with the utmost diligence, within the time above mentioned.

That said Oregon and California Railroad Company is now vigorously continuing said construction, in entire good faith; and it will continue the same without any unnecessary delay until its lines are fully completed in the manner specified in the Acts above recited.

Sworn to before me)
this 8th day of January)
1883.)

H. VILLARD.

L. R. Kidder

Notary Public (88)

New York Co.

(Seal.)

OREGON & CALIFORNIA

R. R. Co.

15 Jan'y 1883.

Asst Attny Genl

U. M. Seller

322

Henry Villard,

New York City,

8 Jan'y 1883.

Concerning the land grants to Oregon & California
R. R. Co. and the Oregon Central R. R. Co.

M. L. 268837

C 4

DEFENDANTS' EXHIBIT 385

consists of the following:

H. R. Report No. 1664, 1st Session, 48th Congress,
subject—"Unearned Land Grants"; recommitted to the
Committee on Public Lands and ordered to be printed
May 29, 1884;

Also H. R. Report No. 931, 1st Session, 49th Congress, subject—"Forfeiture of Lands Granted To California and Oregon Railroad", March 8, 1886, referred to the House Calendar and ordered to be printed;

Also H. R. Report No. 930, 1st Session, 49th Congress, subject—"Forfeiture of Lands Granted To California and Oregon Railroad", March 8, 1886, referred to the House Calendar and ordered to be printed; which exhibit is as follows:

48TH CONGRESS, 1st Session.

HOUSE OF REPRESENTATIVES.

REPORT NO. 1664.

UNEARNED LAND GRANTS.

MAY 29, 1884.—Recommitted to the Committee on Public Lands and ordered to be printed.

MR. LEWIS, from the Committee on the Public Lands, submitted the following

REPORT:

(To accompany H. Res. 253.)

The Committee on the Public Lands, having had under consideration House resolution 253, respectfully report as follows:

The Commissioner of the General Land Office, in his annual report for the year 1883, after giving a tab-

ulated statement of the various land grants made to the different States, and to corporations to aid in building railroads, and in which the conditions of the granting acts had not been complied with, uses the following language:

The question of declaring a forfeiture of the foregoing grants, or any of them, is deemed an appropriate one for legislative consideration.

The time fixed in the granting acts for the completion of the roads expired, in some instances, in 1866, and, in other cases, at other periods down to 1882.

In the absence of Congressional action lands have been certified or patented accordingly as roads have been constructed, whether within or out of the time prescribed. Your immediate predecessor suspended this practice prior to the meeting of Congress in December, 1880, but, as no legislative action was taken, you have held that under the decision of the Supreme Court of the United States you had no right to declare a forfeiture, or to further suspend the issue of patents for lands along the constructed portions of roads, even if the same had not been built within the prescribed time. The remaining lands are continued in the reservations established by law or under withdrawals made for the protection of the grants. Meanwhile settlers have entered upon some of these lands, and are anxious to know whether they must look to the railroad companies or to the United States for their titles.

The public demand for a definite settlement of the question whether a forfeiture is to be enforced in any of these cases is constantly pressed upon my attention. I consider it of very great importance that the earliest possible action should be taken either to revive the grants or to declare them forfeited. If it be the judgment of Congress that the grants should be revived, Congress may unquestionably prescribe the conditions of such revival; and if such action should be taken, I suggest that all actual settlers on the land be saved and secured in their rights and claims to land embraced in their settlements and improvements at the date of any such revival of the railroad grant.

Your committee have patiently and laboriously investigated the facts and law touching many of these land grants, and have reported many bills to this House forfeiting and restoring the lands to the public domain.

Many others remain yet to be examined, in regard to which bills have been introduced and referred to your committee, and all of which have for their object forfeiture of the grant.

So far they have failed to find one company that has complied with either the letter or spirit of the law (at least in the opinion of a majority of the committee), and considering the enormous amount of land involved we deem it of the highest importance to take any and every step possible to protect the rights of the Government, and especially of the people, in and to the pub-

lic lands which have been lavished upon different railway corporations to an alarming extent.

If it be true, as stated by the commissioner, that "in the absence of Congressional action lands have been certified or patented accordingly as roads have been constructed whether within or out of the time prescribed," this fact of itself fully justifies the passage of the resolution.

Time forms an important element in all these land grants, or it would not have been so universally inserted in the acts of Congress.

It is a grave responsibility for an administrative officer to disregard any of the conditions the lawmaker has seen proper to attach to a grant of land for public or private purposes, and the fact that it has been done to any extent, however limited, warrants the adoption of proper enactments to prevent its recurrence.

That it would be highly improper to take any further steps towards the confirmation of any land grant wherein bills for their forfeiture are now pending in either branch of Congress does not admit of question, and no good reason can be urged why the Secretary of the Interior should not be armed with an authoritative declaration from Congress upon the subject.

It will not only relieve him from the "pressure of parties in interest" whose persistent demands await only the adjournment of this body to be renewed in full

force, but it will protect the rights of the people and doubtless eventuate in driving these wealthy corporations into the courts of the country where these contests must ultimately be determined.

In regard to the second section it is simply an enunciation of what your committee believe to be sound principles of law.

In *Rice vs. Railroad Company* (1 Black, 380), Mr. Justice Clifford, after citing various decisions, summarizes the law thus:

Taken together, these several cases may be regarded as establishing the general doctrine that whenever privileges are granted to a corporation and the grant comes under revision in the courts such privileges are to be strictly construed against the corporation and in favor of the public, and that nothing passes but what is granted in clear and explicit terms.

The court say, in *Mills et al. vs. St. Clair County* (8 How., 581.)

That if the meaning of the words be doubtful in a grant designed to be a general benefit to the public, they shall be taken most strongly against the grantee and for the Government.

Other authorities might be cited, but it is not deemed necessary.

Your committee recommend the following amendments:

Insert the words "in Congress" after the word "bills" in line 8 of the first section, and substitute the word "shall" for "should," in line 6 of the second section, and as thus amended they recommend the passage of the resolution.

JOINT RESOLUTION prohibiting the confirmation, certification, and patenting of unearned land grants.

Whereas numerous bills have been introduced in both branches of Congress to forfeit lands granted to aid in the construction of railroads, and many of such bills have been favorably reported to this House; and

Whereas, it is important that something should be done looking to a speedy settlement of the serious and vital questions growing out of the agitation of this subject in and out of Congress: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, prohibited from taking any further steps to confirm, certify, or patent any lands granted to any corporation, State, or person by Congress in any case where reports, favoring the forfeiture of such land grants, have been made to either branch of this Congress, until after final action shall be taken upon such bills *in Congress*, or until the Supreme Court of the United States, in a proper case shall decide upon the validity of such grant.

SEC. 2. That the Secretary aforesaid be, and is hereby, prohibited from certifying or patenting to any corporation any land grant except where such corporation has complied strictly with all the conditions of the granting act, and that in all cases of doubt in construing these conditions, the benefit of the doubt *shall* be given to the Government.

MR. OATES, from the Committee on the Public Lands, presented the following

VIEWS OF THE MINORITY.

We dissent from the report of the Committee on the Public Lands on joint resolutions No. 253, for the following reasons:

The first resolution, right enough in itself, prohibits the Secretary of the Interior from "taking any further steps to confirm, certify, or patent any lands granted to any corporation, State, or person by Congress in any case where *reports* favoring the forfeiture of such land grants have been made to either branch of this Congress until after final action" is had thereon. This we favor, but the report goes the full length of prohibiting the said Secretary from such action upon the mere introduction of a bill for the forfeiture of any such grant. We are opposed to placing any such construction upon the said first resolution, of which it is not fairly susceptible, and is thus construed, then we are opposed to

the resolution itself, but not otherwise, because it might be made the means of doing the grossest injustice. It would place it within the power of a single member of Congress, by the mere introduction of a bill, to give vast annoyance and suspend the issuance of patents to a railroad company which was by every principle of law entitled to them. We should, however, not be surprised at this part of the report when in a preceding part of it the statement is made that no railroad company has been found which had complied with the conditions of its land grant in either the letter or spirit of the law. A bill was introduced six months ago, at the beginning of the present session to forfeit the lands granted to the Great Southern Railroad, running from Chattanooga, Tenn., through the State of Alabama to Meridian, Miss., a distance of about 300 miles. No action has been taken thereon by the committee, and the pendency of that bill retards the company in obtaining patents and selling their lands, notwithstanding they have the necessary certificates and proofs that the road was constructed and completed as required in the granting act—a compliance with the law both in the letter and the spirit. With this case in the hands of the committee, and a statement of these facts having been made in open session two months ago, it can scarcely be said to be a fair statement that none of the railroad companies have complied with the terms of their grant. We refer to this case as an illustration.

We also dissent from that part of the report wherein

it charges "an administrative officer" (we presume the executive officer at the head of the Interior Department is meant) with issuing patents to these corporations in violation or disregard of the law, because the reflection is unjust. The quotations from the last annual report of the Commissioner of the General Land Office show that the rulings of the Department touching land grants has been in strict accord with the decisions of the Supreme Court of the United States in *Shulenburg vs. Harryman*, in 21 Wallace, which was not a legislative decision. It did not make any fresh law, but was a faithful and able application of principles as old as the common law of England to the facts presented in that case. These old principles thus applied informed the Secretary of the Interior and everybody else who took pains to read and understand that time was not such an important or essential element in these railroad land grants, nearly every one of which are estates upon condition subsequent, as to defeat them without the act of the grantor when the road was not completed within the time mentioned in the granting act. After the expiration of the prescribed time within which the road was to have been completed by the terms of the grant the title still remained in the railroad company, and they may lawfully sell (or earn) the lands by the construction of the road, which is the purpose of the grant so long as the grantor (the Government) permits the company to proceed. See 2d Blackstone's Commentaries—estates on condition subsequent.

We cannot join in the recommendation for the

adoption of the second resolution, because the same prejudges every controversy arising out of land grants, including those now pending in this House and the Senate, wherein the committee are divided in opinion, and prohibits for all time the issuance of patents or certifying any lands granted to any corporation except where there has been a strict compliance with all the conditions of the granting act, and makes the Secretary of the Interior *the judge* to ascertain and determine when all of the conditions are performed. It is proposed to make this resolution retract or apply to a case wherein a company, acting under the law but out of time, constructed a road and become entitled to the lands coterminous, so as to defeat the lawful claim of such lands. It is thus an attempt to divest vested rights without due process of law. We care nothing more for railroad companies than for other citizens. We favor just and constitutional legislation for all classes.

The hope is expressed by the committee that the adoption of the resolutions will drive these corporations into the courts where the controversies growing out of land grants will at last have to be settled. If the committee are in earnest in this declaration that the courts will ultimately have to settle these matters, why, we respectfully ask, have not the committee proposed some general measure to expedite that course? Why retain jurisdiction of each particular case and perform great labor in undergoing the mockery of a legislative-politico semi-judicial trial in a committee room with identically the same verdict in every case, instead of perfecting a

measure and endeavoring to pass it, requiring the courts, as speedily as practicable, to adjudicate and settle them, if, as the committee say, they must all at last go there for settlement?

We presume that the object of the second resolution is to prevent or prohibit the Secretary of the Interior from issuing patents in any case where the United States as grantor may legally declare the land granted forfeited, but the resolution is so constructed as to defeat the very purpose of the committee in recommending its adoption. They no doubt intended to take away from the Secretary the right to certify or patent in any and every case where there was any ground of controversy, but instead of so doing the resolution leaves him still to judge whether there has been strict compliance with the granting act. In the Senate there has been a general law proposed, and every lawyer in the United States knows, or ought to know, that not one of "these wealthy corporations," as they are called in the report, can sue the United States, because the courts of the United States have no jurisdiction until there is a statute conferring jurisdiction touching these matters. The resolutions barricade every avenue of escape from the citadel and then set fire to it to force the garrison to come out and fight fairly.

We offer as a substitute for the resolutions Senate bill No. 1445.

WM. C. OATES.

V. S. VAN EATON.

A BILL to provide for the settlement of the rights of the States and of the corporations and persons interested in any grant of lands in aid of railroads and canals which shall be declared forfeited by act of Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the circuit courts of the United States shall have jurisdiction to hear and determine all questions and controversies that may arise between the United States and any person or corporation upon the declaration hereafter made by act of Congress that any grant of the public lands of the United States in aid of the construction or equipment of a railroad or other road or canal has been forfeited, and shall also have jurisdiction to determine whether any such declaration of forfeiture by such act of Congress is so made as to abridge, impair, or destroy the rights of any State, corporation, or person having vested rights, easements, or privileges under the acts of Congress making such grants.

SEC. 2. That when Congress has by law declared that any grant of lands referred to in the first section of this act is forfeited, it shall be the duty of the Attorney-General of the United States to exhibit and file a bill in equity in a circuit court of the United States in the judicial district in which the granted lands, or some part thereof, are located, in the name and in behalf of the United States of America, and against the persons or corporations claiming the benefits of such land grant, or

its successor, for the purpose of settling, according to the true intent, purpose, and meaning of the laws of the United States relating to such grant, all the legal and equitable rights of the United States, and of such grantee, or its successors or assigns, to said lands, or any part thereof, under such grant or to any right, easement, or privilege thereto appertaining; and said circuit court shall have full and complete power and jurisdiction to adjudge, determine, and enforce, by appropriate order or decree made in such suit, the said rights of the United States, and those also of all persons or corporations claiming or having any such right, easement, or privilege against the United States under agreement with or conveyance from such grantee, or its successors, or of any person or corporation claiming or having such right, easement, or privilege adversely to such grantee, or its successors, and against the United States. Any State whose rights are affected by the forfeiture of any such grant of lands may file its petition in said cause setting forth the facts upon which its claim is based, and asking for such relief as shall be appropriate thereto, which petition shall be answered by the Attorney-General on the part of the United States; and upon the hearing of such petition, on the pleading and proofs, the court shall decide upon the merits of the claim as against the United States so asserted by such State. And so, in like manner, may any person or corporation propound its claim to any right, easement, or privilege in such forfeited lands as against the United States, which shall be answered, heard, and decided in like manner. At

any time during the progress of said case the court may order a consolidation of any of such petitions, so as to lessen the costs and facilitate the final disposition of the same.

SEC. 3. That upon the filing of such bill, and during the first term of the court thereafter, or in the vacation of such court, the court, or the judge of the circuit court in which such bill is filed, shall, upon application of the complainant, make an order, which shall be entered of record in such court, and shall be published as often as may be required for a term of sixty days from the date of such order, notifying all persons having any interest in the lands so declared forfeited to appear and propound their claims to the same, by petition, within the period of one year from the date of such order. Such order, with a brief statement of the allegations in the bill, shall be published in a newspaper, or in several newspapers, if the court or judge shall so direct, as near as may be to the said land grant in each State or Territory in which the same, or any part thereof, is situated. The publication of such order shall have the same effect upon all persons having any interest in said forfeited lands as if they were duly served with lawful process in said suit. And no claim for any interest in such lands shall be propounded in said case without special order of the court after the period of one year from the date of such order.

SEC. 4. That if any question shall arise upon the pleadings in such case as to the power of Congress to de-

clare a forfeiture of the lands covered by such grant, or as to the extent or manner of declaring such forfeiture, it shall be the duty of the circuit court to decide said question before proceeding to decide upon any other claim set up in said case, and, upon motion of any party interested therein, to certify the same, with so much of the record as shall be necessary to its proper understanding, to the Supreme Court of the United States, for its judgment thereon: *Provided*, That such motion is made during the term of the circuit court at which such decision is made. And the Supreme Court shall advance the hearing of said certified question so that the same may be decided with all convenient speed.

SEC. 5. That after a final decree is rendered in the circuit court of the United States upon any petition presented in such cause under the provisions of this act, if the amount involved in controversy in any petition, or in any class of consolidated petitions, is in excess of five thousand dollars, an appeal may be taken from such final decree to the Supreme Court of the United States, under the laws, rules, and regulations governing appeals in equity cases: *Provided*, That such appeal shall not be allowed after six months from the date of such final decree.

49TH CONGRESS, *vst Session.*

HOUSE OF REPRESENTATIVES.

REPORT No. 931.

FORFEITURE OF LANDS GRANTED TO
CALIFORNIA AND OREGON RAILROAD.

MARCH 8, 1886.—Referred to the House Calendar and
ordered to be printed.

Mr. HENLEY, from the Committee on the Public Lands,
submitted the following

REPORT:

(To accompany bill H. R. 6659.)

The Committee on the Public Lands, to whom were referred sundry bills the forfeiture of the lands heretofore granted to the California and Oregon Railroad Company to aid in the construction of a railroad over the route prescribed in the granting act, have had the same under consideration, and make the following report:

There being no material change in the legal status or in the points presented in the arguments of counsel in behalf of this corporation from what was presented to the Public Lands Committee in the Forty-eighth Con-

gress, your committee hereby adopt and present as its own the report made by said committee in the Forty-eighth Congress.

The Committee on the Public Lands, to whom were referred sundry bills looking to the forfeiture of the railroad lands heretofore granted to the California and Oregon Railroad Company to aid in the construction of a railroad over the route prescribed in the granting act, have had the same under consideration, and make the following report:

Your committee have made careful examination of the facts presented them on behalf of the claimants of this land grant, the California and Oregon Railroad Company, and find substantially the facts in connection therewith to be as follows:

On the 25th day of July, 1866 (U. S. Stat., vol. 14, page 239), an act was passed by the Congress of the United States entitled "An act granting lands to aid in construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon." The grant was in the usual form, being a grant *in presenti*, with a condition subsequent annexed. Section 6 of said act required that the company should construct, within one year after the passage thereof, the first section of twenty miles of the said railroad, and at least twenty miles in each year thereafter, and the whole on or before the first day of July, one thousand eight hundred and seventy-five; and that the railroad

should be of the same gauge as the Central Pacific of California and be connected therewith. In order that the general scope and purpose of said act may be clearly understood, it is deemed best to set out the first section thereof *in extenso*, which reads as follows:

CHAPTER CCXLII.

AN ACT granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the California and Oregon Railroad Company, organized under an act of the State of California, to protect certain parties in and to a railroad survey "to connect Portland, in Oregon, with Marysville, in California," approved April sixth, eighteen hundred and sixty-three, and such company organized under the laws of Oregon, as the legislature of said State shall hereafter designate, be, and they are hereby, authorized and empowered to lay out, locate, construct, finish, and maintain a railroad and telegraph line between the city of Portland, in Oregon, and the Central Pacific Railroad in California, in the manner following, to wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph line within the State of California, beginning at some point (to be selected by said company) on the Central Pacific Railroad in the Sacramento Valley, in the State of Califor-

nia; and running thence northerly, through the Sacramento and Shasta Valleys, to the northern boundaries of the State of California; and the said Oregon company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the city of Portland, in Oregon, and running thence southerly through the Willamette, Umpqua, and Rogue River Valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first named company: *Provided*, That the company completing its respective part of the said railroad and telegraph line from either of the termini herein named to the line between California and Oregon, before the other company shall have likewise arrived at the same line, shall have the right, and the said company is hereby authorized to continue in constructing the same beyond the line aforesaid, with the consent of the State in which the unfinished part may lie, upon terms mentioned in this act, until the said parts shall meet and connect, and the whole line of said railroad and telegraph shall be completed.

Other provisions of the act are to the effect that the two companies mentioned therein, namely, the Oregon and California and the California and Oregon, should both be operated as one continuous line; and there are certain other provisions in the act relative to the transportation of mails of the United States, &c., which it is not material to the purposes of this report to particularly advert to. By a subsequent act, dated June 25, 1868, the time for the completion of this road, or the two roads,

was extended to 1880. The work of construction at both ends of the line of this road seems to have been begun within the time prescribed by the act or the amendment thereto, and to have been duly prosecuted within the allotted time, until the California portion, starting from the north point on the main line of the Central Pacific Railroad, not far from Sacramento, had reached Redding, a point $150\frac{1}{2}$ miles northward, late in 1872. The road, up to this point, has been accepted by the Government, and patents to the company have been issued by the Government for all of the lands adjacent to the completed portions of the road and coterminous therewith, amounting in all to 1,537,919 acres. The Oregon portion had, in the mean while, been pushed southward, from the northward terminus at Portland, to Roseburg, a point 197 miles distant, leaving at the above stoppage, a gap of about 275 miles to be built, of which nearly equal parts belong to each of the undertaking companies.

It was stated to your committee, in reference to the Oregon portion of this road, that Ben. Holliday, a mail contractor, was president of the Oregon Company, and in 1872 it became hopelessly involved in debt, and that at the suit of the mortgage bondholders it was placed in the hands of a receiver. The California Company, which had, in the interval, become merged into and become a part of the Central Pacific, a corporation of abundant means, alleges that its operations were discontinued about the same time for the reason that without the prospect of a through connection, they had no motive or inducement to build to the State boundary,

the designated point of junction. The lands alone, it was alleged, were not a sufficient inducement, as they were chiefly broken and mountainous or infertile in character, and the work would be very costly and difficult, while the local traffic would be insignificant. The contention was that the principal value of the work remaining to be built lay in the formation of the through line; that one of the co-operating parties was insolvent, and the other, though financially able, would require the consent of the State of Oregon to build within that State, which consent, it was apprehended, there might be some difficulty in obtaining. In this condition of suspense the enterprise remained from 1873 to 1881, a period of eight years, not one mile of road being built, or any appropriation therefor, unless the running of several lines of survey and a rehabilitation of the finances of the Oregon Company can be called such.

It was not until the portion in Oregon had passed into the control of Mr. Henry Villard, who was also president of the Northern Pacific Railroad, that the actual extension of the contract was resumed, and the work, also, at the southern end recommenced. The gap has since been narrowed to about one-half by the construction of about 100 miles in Oregon and by the partial construction of some 20 miles in California; but it is asserted by the railroad companies that the latter is let to contract, and that the grading forces are at work at critical points, such as tunnels, rock-cuts, and fills, all along the line, with the expectation of making a

junction near the State boundary and opening the line through during 1886. It is claimed by both of these companies, and with some show of reason, that the construction of this railroad is of very great importance, both as respects its necessity to the military defense of our west coast and its benefits to the mining and agriculture of that great Northwest region. The interchange of products, mails, and passengers between California and Oregon and the country north and east of it must continue to depend upon the ocean along a coast somewhat dangerous because of the absence of good harbors, until this road is opened, and of course, in the matter of transportation, its completion will bring both celerity and safety to the inhabitants of that region, besides affording the opportunity to all the world to cross the continent by the Northern Pacific route, returning by Central route, or *vice versa*, as well as open new mining fields and agricultural resources to the energies of the people.

Against the forfeiture of this act the railroad companies above named have made the following points in their argument: Their contention is, that the grant of land was made by Congress to these companies and to their assigns, for the purpose of affording a great public highway that would be available to the United States Government in time of war and for the transportation of freight and passengers, and thus develop and open up a section that now stands greatly in need of this character of communication; and they have laid great stress upon the title of the act, which is "An act grant-

ing land to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon." Against the policy of forfeiture these companies have contended that section 5 of the act prescribing the conditions of the grant is definitive of the intention of the Government to bestow the grant upon these companies as a compensation for the construction of the road. They urge, since that was the purpose of Congress in granting these lands, that nothing has occurred since then which could reasonably, or should reasonably, induce the Government to withdraw its grant, even though it were authorized to do so by the technical terms and provisions of the act.

There does not seem to be any serious pretense on the part of the California and Oregon Company that Congress has not the legal right, if it thinks proper to exercise it, to declare a forfeiture of all of the lands included in this grant not coterminus with that portion of the road that was completed within the period of time prescribed by the act. So that the question becomes one of very great simplicity, and has been presented to your committee nakedly as an appeal to the sense of justice or the indulgence of Congress in view of all the circumstances of the case. It stands as if Congress were now asked to make a new and original grant. In answer to the points most insisted upon by the company, to wit, that it should not in reason have been called upon to continue the construction of its portion of the road while financial objections existed in reference to the other end, which seemed likely to defeat the con-

struction of that portion of it, your committee have simply this to say:

In the first section of the act of July 5, 1866, we find the following language employed:

“Provided, That the company building its respective part of the said railroad and telegraph from either termini herein named to the line between California and Oregon before the other company shall have likewise arrived at the same line shall have the right, and the said company is hereby authorized to continue in constructing the same beyond the line aforesaid with the consent of the State.”

In the brief filed with your committee by Mr. Tweed, counsel for the California company, he expresses a doubt as to whether the consent of the State of Oregon could have been obtained to continue the construction of the road onward to the northern terminal point; and it is contended that since there was a substantial doubt as to whether Oregon would give such consent, it would have been imprudent in a business point of view for the California company to continue its construction with no reasonable probability of being met by the sister line coming from the north.

In order to test the sincerity of the point thus presented, it is of some profit to recur to the all-pervading wish existing in Oregon and throughout the West, at that time and ever since, for the construction of a railroad. It is not credited by your committee that if the California company had continued their construction

up to the Oregon line there would have been the slightest difficulty in obtaining the consent of the legislature of Oregon to continue the building of the road on northward to the terminal point, or until the portion of the road already built was reached.

Although not clearly proven to your committee, yet facts enough were brought before us to raise the suspicion that the resumption of the building of the road may mainly be attributed to a fear on the part of the Central Pacific that the Villard combination would build a road from Portland, over another route nearer to the coast, and thereby antagonize in some way the interests of the California company; and we think out of the agitation of that scheme a composition or agreement between the two parties was effected by which the building was resumed. One of the objects that has heretofore moved Congress in making these munificent and unparalleled donations of the public domain to railroad corporations has been to secure the early completion of these roads through sparsely inhabited portions of the country in order to settle up and develop the same. It has been a recognized fact that in many instances the necessities of the Government have required the construction of railways through regions which would not, without the aid of the Government subsidy, pay a fair remuneration upon the capital invested. And hence the donations of public land have simply been a method employed by the Government to pay companies to construct railways through countries where the traffic would not

pay interest upon the capital employed in the construction thereof.

When this land grant was made in 1866, and indeed for ten years thereafter, it may be assumed that no company would have constructed a railway without Government aid; and hence the California company built the road as far as Redding, as hereinbefore stated, for which they have received patents to lands amounting to over 1,300,000 acres, much thereof being land of great value. The remaining portion of the road to be constructed is through a mountainous country, presenting, as has been stated to your committee by the railroad companies' attorneys, tremendous natural barriers and obstructions, and its continuance will undoubtedly involve great expense; but the company now is in such condition that to render remunerative and available the other portions of the road already constructed they must build the road to the Oregon south line. Therefore, in viewing this matter it will be seen that the California company is simply and only in possession, as above stated, to appeal to the liberality or bounty of this Government, and in the consideration of this appeal it has been impossible for your committee to disembarass itself from a knowledge of the antecedent history of the corporation that now owns and controls the California and Oregon Railroad, viz, the Central Pacific Railway Company.

One of the great overshadowing evils of this country unquestionably is the aggregation of colossal fortunes in

the hands of a few men. We all know from the contemporaneous history of this country that the Central Pacific has been the recipient of the lavish and even prodigal bounty of this Government. According to current representation it is a corporation whose power, audacity, and strength have left unvisited by its meretricious influence no department of the Government; whose power has stood omnipotent in Congressional and legislative lobbies; has waved the baton of authority in political conventions, dictated nominations, framed platforms, and voted its army of employes at elections to defeat the party or the man who had unhappily incurred its disfavor. With its enormous wealth wielding and commanding its myriad instrumentalities, it has assumed a potency in public affairs that renders any further bestowal of public bounty upon it, to say the least, inexpedient.

However these things may be, it is certain that whenever a corporation becomes so powerful as to challenge universal recognition of the fact that it is a potential factor in politics, the point is then reached when the public weal will be best consulted by depletion of its resources rather than by the concession of additional gratuity.

No doubt many of these representations have been exaggerated, but enough is absolutely known to warrant your committee in saying with entire confidence that, as a matter of bounty or of grace from this Government, the Central Pacific has received enough! Had it been made to appear to your committee that the further completion of the line were absolutely dependent

upon the forbearance of the Government it might present a question for our serious consideration whether as a matter of policy it would not be better to extend the time for the completion of this road and not forfeit the land grant; but the work has reached, as before stated, an advanced stage, and is understood to be in the hands of contractors, and will inevitably be completed, because to finish what remains unfinished utilizes the capital already invested, and to discontinue it involves a corresponding sacrifice.

It was further claimed that it would be grossly unfair and unjust to cut off the opportunity to receive these lands now that the whole work is on the eve of completion and the ground is covered with workmen, no faster progress in the situation being practicable. They urge that cost and difficulty are of the essence of the grant and not time.

In this connection they have stated to your committee, and it is undoubtedly true, that very few railroads in this country present anything like the topographical difficulties that lie upon this route. They allege that three successive high mountain ranges are to be crossed; some twenty tunnels in the whole gap, with as many important bridges, and much inevitable delay from snows, &c. These things were urged in support of the equitable plea for indulgence. The all-sufficient answer to this plea, aside from what has been urged hereinbefore, is that the Government cannot afford at this particular time to be indulgent or waive any advantage it may pos-

sess in the letter of its contract. These grants of lands were made upon the theory above adverted to. The law was plain that the road must be completed within a certain specified time. If this has not been done, then there has been a breach of the condition subsequent of which the other party will take advantage.

Upon the question as to whether or not the land grant is legally subject to forfeiture, as I have stated before, there is no serious contention. Nor indeed under the adjudications recognized as authority could there be.

The doctrine in support of the forfeiture has been discussed by your committee in all its phases, and from its constant recurrence in the consideration of these railroad grants almost *ad nauseam*.

It is tersely stated in Sheppard's "Touchstone" (p. 154) as follows:

"It is generally true that he that doth enter for a condition broken doth make the estate void *ab initio*, and that he shall be in of his first estate in the same course and manner as it was when he departed with the possession and at the time of the making of the condition. And hence it is that, if there be any charge or incumbrance on the lands, as if the lessee of land upon condition grant a rent charge out of the land or enter into a statute of recognizance and the conusee has the land in execution and this charge is after the condition is made, in this case when the condition is broken and the party doth re-enter he shall by relation avoid the rent, statute, and recognizance, and hold the land freed

from them all."

The same doctrine is found in other authorities. Thus in Coke, Littleton, 202*a*, it is said broadly:

"He who enters for breach of condition regularly shall have the land of his first estate."

At 201*a* it is said:

"In these cases if the rent be not paid at such time or before such time limited and specified within the condition comprised in the indenture, then may the feoffer or his heirs enter into such lands or tenements and them in his former estate to have and to hold and the feoffee quite to ouste thereof."

This is the language of Littleton. Coke says:

"Regularly it is true he that entereth for a condition broken shall be seized in his first estate or of that estate which he had at the time of the estate made upon condition, but yet this fayleth in many cases."

Coke goes on to specify the cases in which it "fayleth." They are placed under the two heads of "impossibility" and "necessity," and have no application here.

Butler and Hargreaves, in their note to this passage, say:

"It may be further observed: 1st. That as the entry of the feoffer on the feoffee for a condition broken defeats the estate in which the condition was annexed, so *it defeats* all rights and incidents annexed to that estate, as dower, &c., and *all mesne incumbrances of the feoffee.*"

In the now familiar case of *Schulenburg vs. Harri-*
man (21 Wall., p. 44) the Supreme Court say:

“The provision that all lands remaining unsold after ten years should revert to the United States if the road be not then completed is no more than a provision that the grant shall be void if a condition subsequent be not performed; * * * that it is the settled law that no one can take advantage of the non-performance of a condition subsequent annexed to an estate in fee but the grantor or his heirs, or the successors of the grantor, if the grant proceed from an artificial person, and if they do not see fit to enforce a forfeiture on that ground the title remains unimpaired in the grantee.

“In what manner the reserved right of the grantor for breach of the condition must be asserted so as to restore the estate depends upon the character of the grant. If it be a private grant that right must be asserted by entry or its equivalent; if the grant be a public one it must be asserted by judicial proceedings authorized by law; * * * or there must be some legislative assertion of ownership of property for breach of the condition, such as an act directing the possession and appropriation of the property or that it be offered for sale or settlement.”

The “legislative assertion” above referred to will be the bill which your committee recommends favorably.

A glance at the political history of this country during the past decade impresses upon your committee the belief that the people of this country will not countenance any overindulgent treatment of these great railroad corporations. Besides, the United States is always held to

a strict compliance with its engagements, and a sound policy requires that the co-contractors should be held to a like strict fulfillment. The era of forbearance should now be brought to a close. Your committee therefore recommend for favorable action the bill which is herewith reported.

H. Rep. 931—2.

Mr. VAN EATON, from the Committee on the Public Lands, submitted the following as the

VIEWS OF THE MINORITY:

The undersigned members of the Committee on the Public Lands dissent from the views of the majority and refer to their views in minority report on H. R. 6658, which they here adopt, the facts and the law in each case being similar. They therefore offer the accompanying bill as a substitute for the bill proposed by the committee.

H. S. VAN EATON.

H. B. STRAIT.

ISAAC STEPHENSON.

A BILL to resume the title to a portion of the lands granted to aid in the construction of a railroad from the Central Pacific Railroad, in California, to Portland, in Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of all acts and parts of acts making grants of land in aid of the construction of a railroad

from the Central Pacific Railroad, in California, to Portland, in Oregon, as applies to lands coterminous with such portions of said road as were uncompleted on the 1st day of January, 1886, be, and the same are hereby, repealed, and all such lands are hereby resumed as part of the public domain.

49TH CONGRESS,)
 1st Session.)

(REPORT
 (No. 930

HOUSE OF REPRESENTATIVES.

FORFEITURE OF LANDS GRANTED TO OREGON AND CALIFORNIA RAIL- ROAD.

MARCH 8, 1886.—Referred to the House Calendar and ordered to be printed.

Mr. HENLEY, from the Committee on the Public Lands, submitted the following

REPORT:

(To accompany bill H. R. 6658.)

The Committee on the Public Lands to whom were referred sundry bills for the forfeiture of the lands granted to the Oregon and California Railroad Company to aid in the construction of a railroad over the route prescribed in the granting act, have had the same under consideration, and hereby make the following report:

There being no material change in the legal status or in the points made in the arguments of counsel in behalf of this corporation from what was presented to the Public Lands Committee in the Forty-eighth Congress, your committee hereby adopt and present as their own the report made by said committee in the Forty-eighth Congress, as follows, to wit:

The Committee on the Public Lands, to whom were referred several bills for the forfeiture of the grant of public lands inuring to the Oregon and California Railroad Company, having had the same under consideration, beg leave to submit the following report:

July 25, 1866 (14 Stat., 239), Congress, for the purpose of aiding the construction of a railroad and telegraph line from Portland, Oreg., to the Central Pacific Railroad in California, conferred upon two companies a grant of lands of twenty sections, designated by odd numbers, for each mile of the contemplated road. The portion of the line comprised within the State of California was granted to the "California and Oregon Railroad Company," a corporation organized under the laws of that State. That portion within the limits of Oregon was conferred upon "such company organized under the laws of Oregon as the legislature of said State shall hereafter designate."

Section 4 of the granting act provided that an examination of the road in sections of 20 miles as fast as completed should be made by three commissioners to be appointed by the President, and that upon their report

that the road was completed and equipped as required by the act, patents should issue to the companies for the lands coterminous to such completed sections of 20 miles.

The legislative assembly of Oregon, in October, 1868, designated "the Oregon Central Railroad Company," a corporation existing under the laws of said State, as the beneficiary under the act of Congress. The "Oregon and California Railroad Company" is the legal successor in interest of the Oregon Central Company, including all its property and franchises.

Section 6 of the granting act required that the assent of the companies to its terms should be filed within a certain period, and, further, that the whole line of road should be completed on or before the 1st day of July, 1875. This period was subsequently extended by act of Congress of June 25, 1868 (15 Stat., 80), to the 1st day of July, 1880. Section 8 of the granting act provided:

"That in case the said companies shall fail to comply with the terms and conditions required, namely, by not filing their assent thereto, as provided in section 6 of this act, or by not completing the same as provided in said section, this act shall be null and void, and all the lands not conveyed by patent to said company or companies, as the case may be, at the date of any such failure, shall revert to the United States."

The length of the entire road in Oregon, inuring to the said Oregon and California Company, as definitely located from Portland to the State line of California, is 360 miles. Prior to the said 1st day of July, 1880, the

company had completed 197 miles of road running south from Portland. Nine sections of the road, consisting of 197 miles, had been duly examined, reported as fully equipped, and patents ordered to be issued. Patents had, however, in fact been issued for only a small portion of the lands adjacent to the line so completed and equipped. The failure to issue these patents was not chargeable to any neglect or laches on the part of the company, but as your committee is informed by the General Land Office, solely on account of the pressure of business in that branch of the executive service.

At the expiration of the time prescribed by the granting act within which the entire road should have been constructed, there remained uncompleted 163 miles. Of the original amount granted for the entire line, 2,521,600 acres were adjacent to the constructed road, and 2,086,400 acres were adjacent to the portion of the line upon which no work whatever had been done.

The work of construction seems to have stopped in the latter part of 1867. For three or four years thereafter nothing was done. It is claimed that work was resumed in 1881. August 29, 1883, an additional section of 45 miles was accepted by the President, and it is claimed that since that date the work has been still further prosecuted.

Your committee are of the opinion that the grant should be declared forfeited by Congress for all that portion of the road not completed within the period prescribed.

It will be observed that the reversionary clause contained in section 8 of the granting act, literally construed, would forfeit all lands *unpatented* at the expiration of the period named. Indeed, the language is seemingly plain and unambiguous to that effect. But your committee can hardly suppose that any such rigorous and unequitable rule was intended to be applied. The grantee was powerless to control the issue of the patents. Having done within the time all that the law required of it, it could only wait the convenience and pleasure of the United States in the performance of what must evidently be considered a mere ministerial act. To make it responsible for the neglect or the inability of the United States to do that act within the period would hardly conform to the manifest general intent of the enactment. Your committee are inclined to agree to the proposition that the language in question was used in the sense of lands to which the company, at that date, had a vested right to patents. They are clearly of the opinion that it would be inequitable, in any event, to enforce a forfeiture upon such a construction, even if it can be defended upon abstract principles of law.

But your committee are also clearly of opinion that the grant should be forfeited for so much thereof as was coterminous with the uncompleted line on the 1st day of July, 1880.

The legal principles involved in reaching this conclusion are in substance the same as those heretofore discussed in various reports of this committee during the present session recommending forfeiture bills. A

repetition of that discussion here is deemed entirely unnecessary and superfluous.

The power to declare the forfeiture is undoubted (*United States vs. Repentigny*, 5 Wall., 211; *Schulenburg vs. Harrison*, 21 Wall., 44; *Farnsworth vs. Minn. R. R. Co.*, 92 U. S., 66).

The fact of a part performance of the condition after breach is immaterial, for time is of the essence of the contract, and neither laches nor estoppel can be invoked against the Government (7 Otto, 584; 8 *Id.*, 489; *Wheat.*, 720; 11 *Id.*, 184; 4 McLean, 567; 5 *Id.*, 183; 1 Pet., 318; 8 Wall., 269-274; 5 Otto, 316).

Mere indulgence or silence cannot be construed into a waiver of a breach of condition (*Gray vs. Blanchard*, 8 Peters, 284-292; *Washburn*, R. P., sec. 19).

Nor have your committee been able to find any equitable considerations demanding relaxation of the rule properly invoked to protect the interests of the Government in what remains of the public domain. The company stopped its work two years before the expiration of the period limited. No satisfactory or plausible reason therefor, consistent with the facts, has been shown to the committee.

When work was resumed it was after breach of condition. The company assumed all risks of forfeiture, and in the judgment of your committee it cannot now complain if the United States deems it proper to assert her rights in the premises.

Your committee accordingly report the accompany-

ing bill to the House with the recommendation that it be passed, the same being a substitute for several bills before the committee upon the subject.

Mr. VAN EATON, from the Committee on the Public Lands, submitted the following

VIEWS OF THE MINORITY:

The gap of about 125 miles in length between the California and Oregon and Oregon and California roads is, in our judgment, the line of land grant road which the Government and the people of the United States are now most interested in having constructed, and it is our clear conviction that the early closing of this gap and the consequent completion of the through railway line from Portland to San Francisco is so important to the interests of the Government and the people from a military as well as a commercial point of view, that Congress should refrain from placing any obstacles in the way of the speedy completion of the work.

July 25, 1866 (14 Stat., 239), Congress, for the purpose of aiding the construction of a railroad and telegraph line from Portland, Oregon, to the Central Pacific Railroad in California, "and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the line of said railroad," conferred upon two companies a grant of lands of twenty sections, designated by odd numbers, for each mile of the contemplated road. The portion of the line comprised within the State of California was to be con-

structed by the "California and Oregon Railroad Company," a corporation of that State, while the portion within the limits of Oregon was to be constructed by "such company organized under the laws of Oregon as the legislature of said State shall hereafter designate."

Section 4 of the granting act provided that an examination of the road in sections of twenty or more miles as fast as completed should be made by three commissioners to be appointed by the President, and that, upon their report that the road was completed and equipped as required by the act, patents should issue to the companies for the lands coterminous with such completed sections of road.

Section 5 provides that the—

Said railroad shall be and remain a public highway for the use of the Government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States, and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same when so required by the Government of the United States.

The legislative assembly of Oregon, in October, 1868, designated "the Oregon Central Railroad Company," a corporation existing under the laws of said State, as the beneficiary under the act of Congress. The "Oregon and California Railroad Company" is the legal successor in interest of the Oregon Central Company, with all its property and franchises.

The act of April 10, 1869 (16 Stat., 47), expressly provides that the lands granted "shall be sold to *actual settlers only* in quantities not greater than one-quarter section to one purchaser and for a price not exceeding \$2.50 per acre.

The purpose of the act under consideration was to secure a rail and telegraph connection between the Central Pacific Railroad in California and Portland in Oregon, a distance of more than 600 miles. Congress did not make the grant for the purpose of aiding the construction of local lines, covering only portions of this route. There was nothing in the character of the country or its situation or circumstances which would have suggested governmental aid for such a measure. The object to be secured was a through connection, or, as it is expressed in the seventh action of the act, "one connected and continuous line," from the railway system of California to the chief city of Oregon, thus securing connection between the great central and southern trans-continental systems of railway and Portland, Oreg.

This was all the more important in view of the possibility of war with a naval power, which, by its control of the seas, might cut off communication between San Francisco and Portland, and thereby prevent the dispatch of troops and munitions of war from one to the other, thus exposing the west coast to perils which might, to a great degree, be averted by direct and rapid interior rail communication between the two cities. It was for the purpose of securing this communication that the grant in question was made.

Even in the adverse report presented through Mr. Henley at the last Congress these principles are recognized in the following language:

It is claimed by both of these companies, and with some show of reason, that the construction of this railroad is of very great importance, both as respects its necessity to the military defense of our west coast and its benefits to the mining and agriculture of that great northwest region. The interchange of products, mails, and passengers between California and Oregon and the country north and east of it must continue to depend upon the ocean along a coast somewhat dangerous because of the absence of good harbors, until this road is opened, and, of course, in the matter of transportation, its completion will bring both celerity and safety to the inhabitants of that region, besides affording the opportunity to all the world to cross the continent by the Northern Pacific route, returning by Central route, or *vice versa*, as well as open new mining fields and agricultural resources to the energies of the people.

The act designated the California and Oregon Railroad Company and such corporation organized under the laws of Oregon as the legislature of that State should appoint as the instrumentalities selected for the construction of the road. Neither company could build beyond the State line of its own State unless expressly authorized to do so by the legislature of the other State.

Construction was seasonably commenced on both roads, and would have been prosecuted to completion but for the general financial difficulties which so seriously

affected the Ben Halladay party, which was constructing the Oregon portion of the line, that it was compelled to succumb and stop work.

In this situation the Government could not have reasonably asked the California company to proceed with the further construction of their road. The California company had no power to build into the State of Oregon and complete the whole line. They could not have obtained the power from the Oregon legislature, which had designated another company to do the work. The California company could only build to the State line at a vast expense, through a mountainous country as difficult as the Sierra Nevadas, and when they had built there the country would have been no better off than before, for the desired intercommunication by rail between San Francisco and Portland would still be impossible.

The Oregon company was compelled to suspend work on account of the great financial depression which paralyzed all business interests at the time.

The California company was not in fault in suspending construction until there appeared to be a reasonable prospect that the Oregon portion of the road would be built.

As soon as this appeared the California company recommenced work, and it thereafter continued to prosecute it with the utmost diligence and rapidity until the Villard failures brought the construction of the Oregon division again to a halt.

The most difficult portions of the Oregon line are near the State boundary, and still remain to be constructed, while the California company is just in the midst of the difficult portions of its line north of Redding.

In the year 1884 reports of commissioners were filed showing the completion of two 20-mile sections of this difficult portion of the road in California, and these 40 miles were duly accepted by the President in February, 1885.

When the great Villard failures startled the country in 1884 and necessitated a second stoppage of the work upon the Oregon portion, it was apprehended that the inability of the Oregon company to obtain funds for continuing its work would for a long time, if not permanently, obstruct the completion of the line.

It is now understood, however, that arrangements have been recently made by those interested in the California portion of the road by which, unless hostile legislation should intervene, the completion of the line can doubtless now be secured.

The Committee of Public Lands, through Mr. Henley (who understands very well the topographical difficulties of the country to be traversed), said at the last Congress:

It is undoubtedly true that very few railroads in this country present anything like the topographical difficulties that lie upon this route.

The remaining portion of the road to be constructed is through a mountainous country, presenting, as has

been stated to your committee by the railroad company's attorneys, tremendous natural barriers and obstructions, and its continuance will undoubtedly involve great expense.

The Auditor of Railroad Accounts, in a report made January 26, 1881, says:

The country there is of such a mountainous character as to require heavy work and great expense; so much so that it is very doubtful if the road will ever be built.

The Railroad Commissioner, in his report for 1884, says, p. 39: "The uncompleted link involves much heavy and expensive work."

But we are assured and believe that the work will be completed, and that speedily, if Congress shall now withhold its hand from the forfeiture demanded by the majority.

The suspension of work which prevented the completion of the line within the prescribed time has been satisfactorily explained. But even if this were not so, if the excuse could be considered by any one to be in anywise inadequate or insufficient, we find ourselves now in a situation where we can have the road within a couple of years if we cast no stumbling block in the way; and when we count the cost of interference it is our unhesitating judgment that the Government of the United States cannot afford, at the expense of stopping the work, to attempt to forfeit the "earned" lands of this grant, by

which we mean lands coterminous with completed portions of said road, whether completed in or out of time.

It is difficult to understand how it can be seriously claimed that lands already earned can be retained by the Government because it happens that they are not yet patented to the companies.

On this very subject the Committee on the Public Lands of the last Congress, through Mr. Henley, said:

It will be observed that the reversionary clause contained in section 8 of the granting act, literally construed, would forfeit all lands unpatented at the expiration of the period named. Indeed, the language is seemingly plain and unambiguous to that effect. But your committee can hardly suppose that any such rigorous and unequitable rule was intended to be applied. The grantee was powerless to control the issue of the patents. Having done within the time all that the law required of it, it could only wait the convenience and pleasure of the United States in the performance of what must evidently be considered a mere ministerial act. To make it responsible for the neglect of the inability of the United States to do that act within the period would hardly conform to the manifest general intent of the enactment. Your committee are inclined to agree to the proposition that the language in question was used in the sense of lands to which the company at that date had a vested right to patent. They are clearly of the opinion that it would be inequitable in any event to enforce a forfeiture upon such a construction, even if it can be defended upon abstract principles of law.

The correctness of the views thus expressed then, can hardly be doubted now.

On the other hand, if we now permit the work to proceed the Government will secure (*a*) the much needed rail communication between Portland and the railway systems of California ; (*b*) the development of the country between Delta and Ashland so far as it is capable of developing; (*c*) the enhancement of the value of the Government lands along the line of the road; (*d*) the acquisition of the benefits which accrue to the Government from the conditions of the grant as prescribed in section 5, viz: The transportation of mails, the transmittance of dispatches, the preference in the use of railroad and telegraph, the maintenance of the railroad as a highway for the use of the Government of the United States free of all tolls or other charges upon the transportation of property or troops of the United States, and the acquisition of the right to have these transported over the road "at the cost, charge, and expense of the corporations or companies owning or operating the same when so required by the Government of the United States."

All these conditions are, of course, dependent upon the receipt by company of the granted and earned lands.

If the Government sees fit to declare a forfeiture of the earned lands, it annuls the conditions as well as the grant; it cannot retain the benefit of both the grant and the conditions.

Reflection upon this subject has led us to the con-

clusion that this case is an exceptional one, in which the interest and the duty of the Congress of the United States is clear; that it would fail of its duty in the protection of the northwest frontier and the Pacific coast if it took a step which should now imperil the completion of this line.

Already a large part of the Oregon line has been constructed; but the most difficult portion of the line, near the State boundary, still remains to be completed. On the California portion it has been necessary to run expensive tunnels and make costly rock cuts and extensive fills; and during the last four years over \$2,000,000 has been expended upon the California portion alone—a sum sufficient to have constructed the whole line of that portion of the road but for the vast expense of constructing a railroad through the difficult passes of the Trinity and Shasta Mountains, through which the line has to run.

Finally, we are now in a situation in which if we stay our hands the whole of this most difficult and costly work, so essential to the Government and people of this country, and to its protection and integrity in case of war with Great Britain or any other naval power, will be completed.

It appears that not only is there no public demand from any quarter for the forfeiture advocated by the committee, but that on the contrary the Board of Trade of Sacramento and the Chamber of Commerce of San Francisco have strongly protested against it. Two hun-

dred and fifty business firms of Sacramento have united in the protest. The report made at the last Congress through Mr. Henley testified expressly to the "all pervading wish existing in Oregon and throughout the West" for the construction of the road. Every business interest in California and Oregon opposes a forfeiture; the most representative press in California, without distinction of party, concur in the demand that the grant should be left unimpaired; and both houses of the legislature of California have united in a joint resolution of instruction to their representatives against immediate forfeiture, and in favor of the continuance of the grant, in order that the important benefits to accrue from the construction of the road may be secured.

Under these circumstances it is our opinion that the bill reported by the majority of the committee ought not to become a law to the extent of forfeiting the lands simply because they are *conterminus* with portions of said road not built in time. In all similar cases we have steadily opposed a forfeiture or a resumption of the lands granted along the line of the road completed before any act of forfeiture on the part of the Government; these lands, we contend, are "earned," whether patented or not. We therefore present the accompanying bill as a substitute for that of the committee, and ask that it be printed.

H. S. VAN EATON.

H. B. STRAIT.

ISAAC STEPHENSON.

A BILL to resume the title to a portion of the lands granted to aid in the construction of a railroad from Portland, in Oregon, to the Central Pacific Railroad, in California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of all acts and parts of acts making grants of lands in aid of the construction of a railroad from Portland, in Oregon, to the Central Pacific Railroad, in California, as applies to lands conterminous with such portions of said road as were uncompleted on the 1st day of January, 1886, be and the same are hereby repealed, and all such lands are hereby resumed as part of the public domain.

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 386

omitting certificate of County Clerk, is as follows:

9105

Deed Book 245, Page 438. Deed No. 2045.

Issued for contract No. 1705.

ORE. & CAL. R. R. CO.

TO

CITY OF PORTLAND.

THIS INDENTURE, Made this third day of July, A. D. 1893, between the Oregon and California

Railroad Company, a corporation, duly incorporated under the laws of the State of Oregon, party of the first part, and the City of Portland, party of the second part, WITNESSETH: That WHEREAS, the party of the first part did on the seventh day of November, A. D. 1882, by its Contract Numbered 1705, sell and agree to convey unto Almer E. Bowman the land hereinafter described, for the sum and price of Four Thousand Five Hundred and Seventy-nine $40/100$ (4579-40/100) Dollars to be paid as in said contract, provided; and

WHEREAS, Said purchase price has been fully paid to the party of the first part, and said The City of Portland, as assignee of said Almer E. Bowman has thereby become entitled to a conveyance from the party of the first part of all of the right, title and interest which it, the party of the first part, has or may hereafter acquire from the United States in and to said land; and

WHEREAS, By the judgment and decree of the Circuit Court of the State of Oregon for the County of Multnomah rendered on the 12th day of July A. D. 1890, in a suit in equity, in which James Steel was plaintiff and said Oregon and California Railroad Company and the Union Trust Company, a corporation, incorporated under the laws of the State of New York, were defendants, and appeared in said suit, it was found adjudged and decreed by said Court that lands which had been sold by the party of the first part prior to the 12th day of May, A. D. 1887, are not included in or covered by that certain deed of trust executed by the

said Oregon and California Railroad Company to said Union Trust Company, on the 1st day of July A. D. 1887, which trust deed is duly recorded in the record of mortgages for said counties of Multnomah and Clackamas, in the State of Oregon, and it was further decreed that said trust deed is not a lien upon such lands and that said Union Trust Company has no right, under the terms of said trust deed to, or any interest in the money received by said Oregon and California Railroad Company for lands so sold by it prior to the said 12th day of May, A. D. 1887, which judgment and decree is now in full force and effect, and is also recorded in the record of mortgages for said counties of Multnomah and Clackamas.

NOW THEREFORE, in consideration of the premises, and of the payment to the party of the first part of the said sum of Four Thousand Five Hundred and Seventy-nine 40/100 (4579-40/100) Dollars, the receipt whereof is hereby acknowledged, the said Oregon and California Railroad Company, party of the first part, does hereby grant and convey unto said party of the second part, its successors and assigns, all of the said land which is known and described as follows, to-wit:—

The South half of the South half and the Northeast quarter of the southeast quarter of section twenty-three (23) all of section twenty-seven (27) the north half of the northwest quarter, and the southeast quarter of the northwest quarter, the west half of the northeast quarter, and the southeast quarter of the northeast

quarter, the northeast quarter of the southwest quarter and the southeast quarter of section thirty-one (31) the east half of section thirty-three (33) all in Township One (1) south Range Five (5) east, also the north half of section nineteen (19) in township one (1) south range six (6) east; also the north half of section five (5) township two (2) south range five (5) east Willamette Meridian, containing according to the United States survey thereof, two thousand two hundred and thirty-four $70/100$ ($2234\text{-}70/100$) acres, be the same more or less.

TO HOLD THE SAID PREMISES, with the appurtenances thereto, unto the said party of the second part, its successors and assigns forever, reserving however, a strip of land one hundred feet wide, to be used by the Oregon and California Railroad Company for right of way and other railroad purposes, when the railroad of said Oregon and California Railroad Company, or any of its branches is or shall be located upon the premises, and the right to take all water needed for operating of said railroad, and also reserving and excepting from said described premises so much and such parts thereof, as may be mineral lands, other than coal and iron. And the said party of the second part does hereby, for itself and its successors and assigns, covenant with the said Oregon and California Railroad Company, its successors and assigns, that it will erect and maintain on the boundary line or boundary lines between said premises and such right of way, a good lawful and substantial fence sufficient to turn stock.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be sealed with its seal and executed by its 2nd Vice President and Secretary and the party of the second part has hereunto set —— hand and seal, the day and year first above written.

THE OREGON AND CALIFORNIA
RAILROAD COMPANY,

By R. Koehler, 2nd Vice President.

THE OREGON AND CALIFORNIA
RAILROAD COMPANY,

By Geo. H. Andrews, Secretary.

In Presence of:

David Loring, (CORPORATE SEAL)

F. G. Ewald.

STATE OF OREGON,

County of Multnomah.

ss.

BE IT REMEMBERED, That on this third day of July, A. D. 1893, before me, the undersigned, a Notary Public in and for said county and state, duly commissioned and qualified, personally came R. Koehler, 2nd Vice President of the Oregon and California Railroad Company, and Geo. H. Andrews, Secretary of said Company, whose names are subscribed to the foregoing instrument as 2nd Vice President and Secretary of said Company, both personally known to me to be the same individuals named and described in, and

who executed the said instrument and they severally acknowledged to me that he the said R. Koehler, as 2nd Vice President and he, the said Geo. H. Andrews, as Secretary of the said Oregon and California Railroad Company, executed the foregoing instrument as and for the act and deed of said corporation, for the uses and purposes therein mentioned, and the said Geo. H. Andrews, being by me duly sworn, did depose and say that he is the Secretary of the Oregon and California Railroad Company, and resides at Portland, Multnomah County, Oregon; that he is the legal custodian of and is acquainted with and has in his possession, the corporate seal of said company; that the seal affixed to the foregoing instrument as the seal of said Company, is such corporate seal; that the same was so affixed by him as secretary of said Company, on the 3rd day of July, A. D. 1893, by order of the Board of Directors of said Company, and that he signed his name thereto by the like order of the Board of Directors of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

DAVID LORING,

Notary Public for Oregon.

(NOTARIAL SEAL)

Rec'd for Record

Dec. 31st, 1897, at 10:50 a. m.

(Certificate of clerk not printed)

United States v. Oregon &

California R. R. Co. et al.

Defendants' Ex. 386.

Book 246 page 468

9104

O. C. R. R. to Portland

Deed No. 2046

Issued for Contract No. 1804

THIS INDENTURE made this third day of July, A. D. 1893, between the Oregon and California Railroad Company, duly incorporated under the laws of the State of Oregon, party of the first part, and the City of Portland, party of the second part, Witnesseth:

That whereas the party of the first part did on the sixteenth day of February, A. D. 1883, by its contract numbered 1804 sell and agree to convey unto A. G. Cunningham the land herein after described for the sum and price of one thousand nine hundred and fifty-eight $82/100$ (1958-82/100) Dollars to be paid as in said contract provided and whereas said purchase price has been fully paid to the party of the first part and said The City of Portland as assignee of said A. G. Cunningham has thereby become entitled to a conveyance from the party of the first part of all the right, title and interest, which it the party of the first part, has or may hereafter acquire from the United States in and

to said land, and whereas, by the judgment and decree of the Circuit Court of the State of Oregon for the County of Multnomah rendered on the 12th day of July, A. . 1890 in a suit in equity, in which James Steel was plaintiff and said Oregon and California Railroad Company and the Union Trust Company a corporation incorporated under the laws of the State of New York were defendants and appeared in said suit, it was found, adjudged and decreed by said court that lands which had been sold by the party of the first part prior to the 12th day of May, A. D. 1887, are not included in or covered by that certain deed of trust executed by the said Oregon and California Railroad Company to said Union Trust Company on the 1st day of July, A. D. 1887, which trust deed is duly recorded on the record of mortgages for said Counties of Multnomah and Clackamas in the State of Oregon, and it was further decreed that said trust deed is not a lien upon such lands, and that said Union Trust Company has no right under the terms of said trust deed, to or any interest in the money received by said Oregon and California Railroad Company for lands so sold by it prior to said 12th day of May, A. D. 1887, which judgment and decree is now in full force and effect, and is also recorded in the record of mortgages for said Counties of Multnomah and Clackamas.

Now Therefore, in consideration of the premises, and of the payment to the party of the first part of the said sum of one thousand nine hundred and fifty-eight 82/100 (1958-82/100) Dollars, the receipt whereof is

hereby acknowledged, the said Oregon and California Railroad Company, party of the first part, does hereby grant and convey unto said party of the second part, its successors and assigns, all of the said land which is known and described as follows, to-wit: The South half of the North East quarter and the South half of section twenty five (25) the north half of the North east quarter and the North west quarter of Section thirty five (35) all in Township one (1) South Range five (5) East; also the south half of section nineteen Township one (1) South, Range six (6) East Willamette Meridian, containing according to the United States survey thereof nine hundred and fifty five 52/-00 ($955.52/100$) acres be the same more or less.

To hold the said premises with the appurtenances thereto unto the said party of the second part, its successors and assigns forever reserving, however, a strip of land one hundred feet wide to be used by the Oregon and California Railroad Company for right of way and other railroad purposes when the railroad of said Oregon and California Railroad Company, or any of its branches, is or shall be located upon the premises; and the right to take all water needed for the operating of said railroad; and also reserving and excepting from said described premises so much and such parts thereof as may be mineral lands other than coal and iron. And the said party of the second part does hereby for its self and its successors and assigns covenant with the said Oregon and California Railroad Company, its successors and assigns, that it will erect and maintain on the

boundary line or boundary lines between said premises and such right of way, a good, lawful and substantial fence sufficient to turn stock.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be sealed with its seal and executed by its 2nd Vice President and Secretary and the party of the second part has herein set his hand and seal the day and year first above written. In presence of:

David Loring, The Oregon and California Railroad
Company

F. G. Ewart

By R. Koehler, 2nd Vice-President.

The Oregon and California Railroad
Company,

By GEO. H. ANDREWS,
Secretary.

(Corporate seal)

(Seal)

STATE OF OREGON,)
) ss.
County of Multnomah.)

Be it remembered, that on this third day of July, A. D. 1893, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and qualified, personally came R. Koehler 2nd Vice President of the Oregon and California Railroad Company and Geo. H. Andrews, Secretary of said Com-

pany, whose names are subscribed to the foregoing instrument as 2nd vice-president and secretary of said company, both personally known to me to be the same individuals named and described in and who executed the said instrument and they severally acknowledged to me that he, the said R. Koehler, as 2nd Vice President, and he the said Geo. H. Andrews as Secretary of the said Oregon and California Railroad Company executed the foregoing instrument as and for the act and deed of said Corporation for the uses and purposes therein mentioned. And the said Geo. H. Andrews being by me duly sworn did depose and say that he is the Secretary of the Oregon and California Railroad Company and resides at Portland, Multnomah County, Oregon, that he is the legal custodian of and acquainted with and has in his possession the corporate seal of said Company; that the seal affixed to the foregoing instrument as the seal of said Company is such corporate seal; that the same was so affixed by him as secretary of said Company on the 3rd day of July, A. D. 1893, by order of the Board of Directors of said Company, and that he signed his name thereto by the like order of the Board of Directors of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

DAVID LORING,

(Notarial seal) Notary Public for Oregon.

Recd. for record Dec. 31st, 1897, at 10.50 A. M.

No. 9566

STATE OF OREGON)
) ss.
 County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Deed, Oregon and California Railroad Co. to The City of Portland recorded in Book 246 page 468 Record of Deeds, has been compared by me with the (SEAL) original, and that it is a correct transcript therefrom, and of the whole of such original Deed as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 5th day of May, A. D. 1913.

JNO. B. COFFEY,
 County Clerk.

DEFENDANTS' EXHIBIT 387

Is certified copy of stipulation in suit No. 2272, filed in the Circuit Court of the United States, Ninth Circuit, For the District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendants, signed by John W. Griggs, United States Attorney General, as attorney for complainant, and by Wm. F. Herrin, Wm. D. Fenton, and Wm. Singer, Jr. as attorneys for defendant, and filed October 31, 1898.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 388

is a certified copy of stipulation in case No. 2661, filed in the United States Circuit Court, District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendants, signed by John H. Hall, United States Attorney for Oregon, and H. M. Hoyt as Acting U. S. Attorney General, as attorneys for complainant, and Wm. D. Fenton and Wm. Singer, Jr., as attorneys for the defendants, filed October 6, 1902.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 389

is a certified copy of stipulation in case No. 2658, filed in the United States Circuit Court, District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendants, signed by John H. Hall, United States Attorney for Oregon, and H. M. Hoyt, Acting U. S. Attorney General, for complainant, and by Wm. D. Fenton and Wm. Singer, Jr., attorneys for defendant, filed December 3, 1902.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 390

is a certified copy of stipulation in case No. 2273, filed in the Circuit Court of the United States, Ninth Circuit, District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendant, signed by Joseph McKenna, Attorney General of the United States, by Charles J. Schnabel, Assistant U. S. Attorney for Oregon, Daniel R. Murphy, United States Attorney for Oregon, for complainant, and by Wm. D. Fenton and Wm. Singer Jr., attorneys for defendant, and Wm. F. Herrin, counsel for the defendant, filed September 1, 1897.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 391

is a certified copy of stipulation in case No. 2657, filed in the United States Circuit Court, District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendant, signed by John H. Hall, Attorney for United States, and by Wm. D. Singer, Jr., and Wm. D. Fenton, Attorneys for Oregon and California Railroad Company, filed December 3, 1902.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 392

is a certified copy of stipulation in case No. 1936, filed in the Circuit Court of the United States, District of Oregon, in case of The United States, complainant, versus The Oregon and California Railroad Company and The Oregon Central Railroad Company, defendants, also The Oregon and California Railroad Company and The Oregon Central Railroad Company, complainants, versus The United States, defendant, signed by F. P. Mays, U. S. District Attorney for the United States, and by E. C. Bronaugh, L. L. McArthur and W. D. Fenton. Solicitors for the Railway Companies named, filed April 20, 1893.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 393

is a certified copy of a mortgage executed by Oregon & California Railroad Company to Faxton D. Atherton and Milton S. Latham, April 15, 1870, recorded April 16, 1870, in Book "C," page 745, Records of Mortgages of Multnomah county, Oregon, and thereafter, about the same time, in other counties in which any part of the Land Grant lands are situated, and is as follows:

This indenture made this fifteenth (15) day of April in the year of our Lord One Thousand eight hundred and Seventy between The Oregon and California Rail-

road Company a Body corporate created by and under an Act of the Legislature of the State of Oregon approved October Fourteenth A D 1862 entitled "an act providing for private incorporations and the appropriation of private property therefor" and the acts supplementary thereto and amenda-tory thereof party of the first part and Faxon D Atherton and Milton S Latham of the City and County of San Francisco State of California parties of the second part.

Witnesseth Whereas The said party of the first part is authorized and empowered in and by the several acts of the Legislature of the said State of Oregon above referred to, to borrow from time to time on the credit of the corporation and under such regulations and restrictions as the directors thereof may impose such sums of money as they may deem necessary for constructing and completing their railroad and to issue and dispose of bonds or promissory notes therefor to such an extent and in such denominations and bearing such rate of interest not exceeding twelve per cent per annum as the said Board of Directors may determine and also to issue bonds or promissory notes of such denominations as they may deem proper and at the rate of interest not exceeding twelve per cent per annum in payment of any debts or contracts for constructing and completing their railroad with its equipments and all else relative thereto and for the purpose of selling and disposing of the same in the money markets for the purpose of raising money to enable them to purchase materials for and aid them in constructing their railroad and telegraph and to secure the payments of such bonds or notes the said Com-

pany may Mortgage its Corporate Property and franchises.

And whereas for the purpose of providing the means for the construction of the said Rail Road and its equipment and completion the Board of Directors of said Oregon and California Railroad Company party of the first part herein have at a meeting of their Board of Directors duly and legally called and held at the office of their Company in the City of Portland State of Oregon on the Thirteenth (13th) day of April A. D. One Thousand eight hundred and seventy, Resolved in substance and legal effect that said Oregon and California Rail Road Company make, execute issue and deliver under its corporate seal its bonds bearing even date herewith severally payable to the holder thereof or bearer in gold coin of the United States at the banking house of Messrs. Dabney, Morgan and Company in the City of New York on the first day of April A D One thousand eight hundred and ninety-nine with interest from and after the first day of April in the year one Thousand eight hundred and seventy at the rate of seven per cent per annum payable at the same place semi-annually as follows:

Thirty thousand dollars per mile on each mile the whole line of its Rail Road constructed and to be constructed and no more. That is to say that Seven Thousand four hundred and fifty bonds of denominations of one thousand dollars each amounting to seven millions four hundred and fifty thousand dollars.

Six thousand Bonds of denomination Five Hundred dollars each amounting to three millions of Dollars and Five Thousand Bonds of the denomination of one hundred dollars each amounting to Five Hundred thousand dollars and such Bonds of the various denominations aforesaid amounting in the sum total of ten millions Nine hundred and fifty thousand dollars and no more are represented in all by eighteen Thousand four hundred and fifty bonds composed of the various denominations as aforesaid and that for the purpose of a more specific identification thereof that said Eighteen Thousand four hundred and fifty bonds be numbered in a consecutive series from Number One to numbered eighteen thousand four hundred and fifty both inclusive commencing with those of denomination of one thousand dollars each and numbered respectively from number one to number seven thousand four hundred and fifty both inclusive. Secondly with those of denomination of five Hundred dollars each numbered respectively from numbered seven Thousand four hundred and fifty-one to numbered Thirteen Thousand four hundred and fifty both inclusive and lastly with those of denominations One Hundred dollars each numbered respectively from numbered Thirteen thousand four hundred and fifty one to number eighteen thousand four hundred and fifty both inclusive.

And whereas under and pursuant to lawful authority conferred by said several acts of the Legislature of the State of Oregon the said board of Directors of said Oregon and California Rail road further unanimously.

Resolved: In substance and legal effect that the President and Secretary of said Oregon and California Railroad Company executed and acknowledged in its name and on its behalf and under its corporate seal deliver to said Faxon D Atherton and Milton S Latham a Mortgage conveying assigning and transferring to him and them all its corporate, real and personal property franchises and effects, (save and except the lands and franchises granted to the Oregon Company by the Act of Congress approved July Twenty fifth A D One Thousand Eight Hundred and Sixty-six, entitled "And Acts to aid in the construction of a Railroad and telegraph line from the Central Pacific Rail Road in California to Portland in Oregon" And acts supplemental thereto and amendatory thereof which lands and franchises are note to be included in this Mortgage but the same are to be conveyed by said Oregon and California Rail Road Company to Faxon D Atherton, Milton S Latham and Wm Norris as Trustees for the Bond Holders of the Party of the first part herein, the same to be disposed of with the consent of the party of the first part herein and proceeds thereof invested in United States Securities by such Trustees and shall constitute a sinking fund for the payment of the principal of the bonds herein before referred to, reference being had to a resolution of the Board of Directors of the party of the first part herein will more fully appear reference also being had to such deed of Trust executed contemporaneously herewith) as security for the payment of said eighteen thousand four hundred and fifty bonds as afore-

said towit: Seven thousand four hundred and fifty bonds denomination of one thousand dollars each. Six thousand bonds of denomination of Five Hundred Dollars each and five thousand bonds of denominations of one hundred dollars each, making in all ten Millions Nine Hundred and Fifty thousand Dollars as aforesaid and the interest to grow due thereon and that such mortgage should contain all the provisions covenants and conditions hereinafter set forth and that such mortgage and the whole of said Bonds thereby secured be severally dated the fifteenth (15th) day of April A D One thousand eight hundred and seventy.

Now therefore this indenture witnesseth: That the said Oregon and California Rail Road Company the party of the first part hereto under pursuant to and by virtue of the powers and authority conferred upon and vested in it by said several acts of the Legislature of the State of Oregon and under and pursuant to said resolutions duly passed and adopted by the aforesaid unanimous concurrence of its Board of Directors and which are duly entered upon the official minutes of said Board and for and in consideration of the foregoing premises and especially for the purpose of effectually securing to the respective holders the payment of said Eighteen Thousand four hundred and fifty bonds with the interest which shall accrue thereon as aforesaid. And for and in consideration of the sum of One Dollar and other moneys lawful money of the United States of America to it in hand paid by said parties of the second part hereto at and before the ensealing and delivery of

these presents and receipt whereof is hereby acknowledged.

Hath granted bargained, sold assigned, transferred and set over and encoffed, conveyed and confirmed and by these presents Doth grant, bargain, sell, assign, transfer and set over, enfeoff convey and confirm to the said Faxon D Atherton and Milton S Latham and the survivor of them their or his successors or assigns all and singular the Railroad of the said party of the first part hereto now constructed or hereafter to be constructed from a point at the City of Portland in the State of Oregon southerly through the willamette, Umpqua and Rogue River Valley to a point on the southern boundary of the State of Oregon on the California line and all future extensions and branches of said railroad.

Together with all its lands, tenements, and hereditaments acquired and appropriated or which shall hereafter be acquired or appropriated for the purpose of a right of way for a single or double track railroad and all the appurtenances thereunto belonging. It is expressly understood however that all the lands and franchises granted to the Oregon Company by an Act of Congress approved July twenty-fifth (25th) A D One Thousand eight hundred and sixty six entitled "an act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Rail Road in California to Portland in Oregon" and acts supplementary thereto and amendatory thereof are expressly reserved by the party of the first part hereto and are

not included or intended to be included in this mortgage but all which lands and franchises shall be conveyed by the party of the first part hereto to Faxon D Atherton, Milton S Latham and William Norris of the City and County of San Francisco State of California in Trust for the benefit of the Bondholders of the Bonds aforesaid the same to be disposed of under the direction of the party of the first part hereto and the proceeds thereof invested by such Trustee in the United States Securities and shall constitute a sinking fund for the payment of the principal of the Bonds aforesaid all of which will more fully appear reference being had to such Trust Deed Executed contemporaneously herewith. With the exception aforesaid there is also included in this Mortgage in and for the Consideration aforesaid and there is hereby granted bargained sold, assigned, transferred and set over enfeoffed conveyed and confirmed by the said Oregon and California Railroad Company party of the first part hereto to the said Faxon D Atherton and Milton S Latham parties of the second part hereto all the hereinafter corporate property of the said Oregon and California Railroad Company part of the first part hereto/ That is to say. All its lands acquired and appropriated or which hereafter shall be acquired and appropriated for Depots Engine Houses, Machine Shops. Work shops, superstructures, erections and fixtures and also all and singular the franchises rights, and privileges now owned and possessed or acquired or which shall hereafter be owned possessed or acquired by said party of the first part:

And also all the rails bridges, ways, piers, depots engine houses, Car Houses, Station Houses Warehouses Machine Shops Erections, superstructures, fixtures, privileges franchises and rights of said party of the first part and all the lands, tenements hereditaments and real estate acquired and appropriated wheresoever and whatsoever or now owned by said party of the first part or which shall hereafter be owned by it; and all and singular the locomotives passenger cars freight cars and all other cars, carriages, tools, machinery and equipments for said Rail road and now owned or which shall hereafter be owned or acquired by said party of the first part (save and except however the lands and franchises granted by the acts of Congress as aforesaid) And also all goods and chattels rolling stock of every kind and description now owned or which shall hereafter be owned by the said party of the first part and in any way relating to or appertaining or belonging to or connected with said Rail Road its extensions or branches or the running and operating the same together with all rents, issues income profits money rights, benefits and advantages derived or to be derived had or received therefor by said party of the first part in any way whatsoever.

To have and to hold the said premises and every part thereof unto the said parties of the second part the survivor of them their and his successor or successors forever upon the following trust nevertheless that is to say.

First. In case default shall be made in the payment of the interest in any of the said Bonds according to the tenor thereof or of the coupons or interest warrants thereto annexed or in the payment of the principal of any of the said Bonds when the same shall become due and shall be demanded and if any such default shall continue for the period of three months or in case of any default in any requirement hereof to be done or kept by the said Company and if any such default shall continue for the period of three months then and in either case the said parties of the second part the survivor of them their or his successors in the trust created or declared by this indenture either personally or by his or their attorney or agent may or upon due requisition as hereinafter provided shall enter into and upon all and singular the premises hereby conveyed or intended so to be and each and every part thereof and have hold and use the same operating by his or their superintendents managers or servants or other attorneys or agents the property of the said company and conducting the business thereof and exercising the franchises pertaining thereto and making from time to time all repairs and replacements and such useful alterations, additions and improvements thereto as may seem to him or them judicious and collecting and receiving all tolls, incomes, rents, issues and profits of the same and every part thereof and after deducting the expenses of the operating the said railroad property and all appertenances and of, conducting the business of the said railroad company and of all the said repairs and replacements alterations ad-

ditions and improvements and all payments which may be made for taxes, assessments charges or liens prior to the lien of these presents upon the said premises or any part thereof as well as just compensation for their or his own services and for the services of such attorney or counsel as may have been by him or them employed shall apply the moneys arising as aforesaid to the payment of the interest on the Bonds secured here-by in order in which such interest shall have become or shall become due rateably to the persons holding the coupons evidencing the right to such interest and after paying all interest which shall have become due to apply the said moneys to the payment of the principal of the said Bonds secured hereby rateably to the persons holding such bonds and after the payment of the principal of all the bonds secured thereby if any surplus shall remain to pay over the said surplus to the party of the first part or dispose of the same as and Court of Competent Jurisdiction may order.

Second. In case any default shall be made as hereinbefore expressed and defined and shall continue as hereinbefore specified then and in any case the said parties of the second part and the survivor of them their or his *successors* in the trust created or declared by this indenture may or upon due requisition as hereinafter provided shall personally or by his attorney or agent sell and dispose of all and singular the premises hereby conveyed or intended so to be at Public Auction in the City of New York or at such other place as the said Trustees or the survivor of them their or his successor

may designate and at such time as they or he may appoint, having first given notice of the time and place of such sale by advertisement published not less than three times a week for six week in one or more newspapers to be designated by the said Trustee the survivor of them their or his successors or successor or to adjourn the sale from time to time in their or his discretion. And if so adjournment to make the same without further notice at the time and place to which the same be adjourned and to receive the Proceeds thereof and to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds in the law for the same which sale made as aforesaid and whether sybject to any lien or otherwise shall be a perpetual bar both in law and equity against the parties to these presents and all other persons claiming or to claim the said premises or any part thereof by from through or under them or any or either of them and after deducting from the proceeds of such sale just allowances for all expenses thereof including attorneys and counsel fees and all other expenses advances or liabilities which may have been made or incurred by the Trustees or the survivor of them their or his successors or successor in operating or maintaining the said rail road property or in managing the business of the said company while in their or his possession and in arranging for the completing the sale hereinbefore conveyed property and all payments which may have been made by them or him for taxes or assessments or other charges for the said property as well as compensation for their or his own services apply the said

proceeds to the payment of interest on the Bonds secured hereby in the order in which such interest shall have become due rateable to the person holding the coupons evidencing the right to such interest and after paying all interest that shall become due to apply the remaining proceeds of such sale as aforesaid to the payment of the principal of the bonds secured hereby rateably to the persons holding the said Bonds and after the payment of the principal of the Bonds secured hereby if any surplus, shall remain to pay over the said surplus to the party of the first part or to dispose of the same as any Court of Competent Jurisdiction may Direct.

And it is hereby declared that the receipt or receipts of the said Trustees the survivor of them, their or his successor or successors shall be sufficient discharge to the purchaser or purchasers of said premises for his or their purchase money and such purchaser or purchasers his or their heirs executors or administrators shall not after payment thereof and having such receipts be liable to see the application of such purchase money upon or for the trusts and purposes of these presents, or in any manner whatever be answerable for any loss misapplication or non-application of such purchase money or any part thereof or be obliged to enquire into the necessity or expediency of or authority for any such sale.

Third. At any sale of the aforesaid property or any part thereof made to enforce the lien created by these presents pursuant to the power herein granted or by

judicial authority the parties of the second part hereto as Trustees or the survivors of them, their or his successors or successor may bid for and purchase or cause to be bid for and purchased the property so sold on behalf of all the holders of the hereby secured Bonds then outstanding in the proportion of the respective interest of such holders provided that if all the property hereby conveyed to be sold as aforesaid the time at which the purchase herein authorized may be made shall not exceed the whole amount of the Bonds then outstanding with the interest accrued thereon in behalf of which the said purchase shall be made and if a portion of the said property shall be sold such price as shall in the judgment of the said Trustee the survivor of them their or his successor or successors be reasonable.

Fourth. In case default be made in payment of any half yearly interest or any of the Bonds hereby secured at the time and in the manner provided in the coupon or interest warrant therewith issued the said coupon having been presented and the payment of the interest thereon specified having been demanded and if such default shall continue for the period of three months after the said coupon shall have become due and payable then and thereupon the principal of all of said Bonds shall at the option of the Trustees the survivor of them his or their successor or successors become immediately due and payable but a majority in interest of the holders of the said Bonds may nevertheless in writing or by the vote of a meeting held pursuant to notice published daily for two weeks in a newspaper printed in the Cities of

New York and Philadelphia and before the interest in arrears shall be paid instruct the Trustees the survivor of them their or his successors or successor to declare the said principal to be due or waive the right so to, declare on such terms and conditions as the majority may deem proper or may annul or reserve the determination of the Trustees the Survivor of them, their or his successor or successors provided that no action of the Trustees the survivor of them their or his successor or successors or of the Bond holders shall extend to or be taken to affect any subsequent default or to impair the rights, resulting therefrom.

Fifth. The Trustees the survivor of them their or his successor or successors shall have full power in their discretion upon the request of a Majority of the Directors of the said company to convey by way of release or otherwise to ther person or persons designated in and by such written request any of the Bonds or property hereby conveyed or intended so to be acquired or held by the said company for the purposes of stations, mills, depots shops. or other buildings and shall also have power to convey as aforesaid on like request any land or property which in the judgement of the said Trustees or the survivor or them herein named or their or his successor shall not be necessary for use in connection with the said property or which may be held by the said Company for a supply of fuel water, clay, timber or other materials and also to convey as aforesaid on like request any lands not occupied by said Company or which may become disused by reason of a change of

location of any depot shop or other buildings connected with the business or operations of the said company. And such lands occupied by the said company and adjacent to such buildings or building as the Director of the said corporation or a majority of them may deem it expedient to disuse or abandon by reason of such change and to consent to any such change and to such other changes in the locations of any and all such mills, depots, shops or other buildings as in their judgement shall have become expedient and to make and deliver the conveyance necessary or proper to carry the same into effect; But any lands which may be required for permanent use in substitution for any so released shall be conveyed to the Trustees hereinbefore named the survivor of them their or his successor or successors upon the trust expressed defined, created or declared by these presents unless the Directors of the said Company shall at the time communicating such requests as aforesaid to the Trustees of the Bond holders hereby constituted or the survivor of them their or his successor or successors or thereafter and prior to the completion of such sale present and deliver up to such last named Trustee or the survivor of them, their or his successor or successors for cancellation such a number of the Bonds hereby secured as shall be equal at the par value thereof to the price or consideration money for which such property shall be released or conveyed as aforesaid in which case the said last named Trustees or the survivor or them their or his successor or successors shall release or convey the same upon such written, request as aforesaid and shall cancel

and destroy the Bonds so delivered up and surrendered by the proceeds of all lands released as aforesaid except as last hereinbefore provided shall be paid over to the Trustees the survivor of them, their or his successor or successors to be applied by them or him to the purchase of Bonds of the said Company in open market but the said Company shall have full power to dispose of according to their discretion such portions of the equipments, machinery and implements at any time held or acquired for the use of the said Company and to facilitate its operations as may have become unfit for such use and to replace the same by new anything hereinbefore contained to the contrary notwithstanding.

Sixth: Upon a default in the payment of the interest or principal of the Bonds hereby secured or in the performance of any of the covenants herein contained upon a requisition in writing signed by a holder or holders of a majority of the said Bonds and a proper indentification by the said holders to the Trustees or the survivor of them, their or his successor or successors against the cost and expense to be by them or him incurred it shall be the duty of the Trustees or the survivor of them their or his successor or successors the right of the Bondholders and these presents by entry sale or suits at law or in equity as being advised by counsel learned in the law they or he shall deem most expedient for the interest of all holders of said Bonds subject to the power hereby declared of a majority in interest of the holders of said bonds by requisition in writing, to in-

struct the said trustees or the survivor of them their or his successor or successors to waive such default provided that no action of the said Trustees or the survivor of them or their or his successor or successors or Bondholders or both in waiving such default or otherwise shall extend to or be taken to effect any subsequent default or to impair the rights resulting therefrom.

And it is mutually agreed by and between the parties hereto that the said Trustees or either of them or the survivor of them or any successor or successors in such office may resign or discharge themselves or himself of the trust created or declared by these presents by notice in writing to the said Company three months before such resignation shall take effect or such shorter time as they may accept as adequate;

NOTICE

That the said Trustees or either of them or their or his successor or successors may be removed in and by a requisition declaration or instrument in writing under the hands and seals of a majority in interest of the holders of the aforesaid Bonds duly executed acknowledged and attested that a successor or successors to such trustees or Trustee shall be appointed with the consent of the holders for the time being of a majority in interest of said Bonds then outstanding and the Trustee or Trustees so appointed shall thereupon become vested with all the powers authorities and estate reserved by granted to or conferred upon the parties of the second part by these presents and all the rights and interests requisite

to enable them or him to execute the purposes of this trust without any further assurance or conveyance by or on the part of the said Company so far as such effect may be lawful and upon the death, resignation or removal of any Trustee or any appointment in his place in pursuance of these presents all his powers and authorities by virtue hereof shall cease and all the estate, right, title and interest in and to the said premises of any Trustee so dying resigning, or being removed shall wholly cease and determine.

And the said party of the first part for itself and its successors in consideration of the premises covenants and agrees to and with the parties of the second part or the survivor of them their or his successor or successors in the trust hereby created or declared that the said party of the first part and its successors shall and will at all times hereafter keep open an office or agency in the City of New York for the payment of the principal and interest of and upon the Bonds hereinbefore recited and described and hereby secured, as the same shall become payable and that any and every default in the due performance of this covenant shall be deemed and taken to be a waiver of presentment and demand of payment of all and every of the Bonds and coupons aforesaid which may become payable during the continuance of such default.

And it is hereby agreed between the parties to this indenture that in the Mean time and until default shall be made in the payment of the interest or principal of

the said Bonds or of some of them or of some part thereof or in some of the covenants or agreements herein contained to be kept observed or fulfilled by the said party of the first part it shall be lawful for the said party of the first part and its successors peaceable and quietly to have hold use possess and enjoy the said premises with the appurtenances and to receive the incomes tolls rents issues and profits thereof to its own use and benefit without any hindrance or interruption suit or disturbance whatsoever of or by the said parties of the second part or their or his successor or successors in the trust or any other person whatever lawfully claiming or to claim the same by from or under them or any of them.

And the said party of the first part and its successors and all and every other person or persons whatsoever lawfully or equitably claiming any estate right, title or interest of in and to the hereinbefore granted premises by from, or under or in trust for it shall and will at any time or times hereinafter upon the reasonable request and at the proper cost and charges in the law of the said parties of the second part or the survivor of them or their or his successor or successors or assigns make do and execute or cause or procure to be made done and executed all and every such further and lawful and reasonable acts conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said parties of the second part as by the said parties of the second part or the survivor of them their or his

successor or successors or their Counsel learned in the law shall be reasonably devised advised or required.

And also that the said party of the first part and its successors the above granted, bargained, sold and assigned premises and every part and parcel thereof with the appurtenances unto the said parties of the second part or the survivor of them or their or his successors or successor against the said party of the first part and its successors against the said part of the first part and its successors and against all and every person and persons whomsoever lawfully claiming or to claim the same by through or under it shall and will warrant and by these presents forever defend.

In witness whereof the said party of the first part has caused its Corporate seal to be affixed to these presents and the same to be signed, by its President and Secretary by resolution of the Board of Directors thereof at the City of Portland State of Oregon this fifteenth day of April in the year of our Lord One Thousand Eight Hundred and Seventy.

(Seal)

BEN HOLLADAY,

In the presence of President of the Oregon and
California Rail Road Company

John H. Mitchell

A. G. CUNNINGHAM,

Secretary of the Oregon and
California railroad Company

State of Oregon .)
) ss.
County of Multnomah)

Be it remembered that on this fifteenth day of April in the year of our Lord One thousand eight hundred and seventy before me the undersigned a Notary Public in and for said County of Multnomah and State of Oregon duly commissioned sworn and fully qualified personally appeared the above named Ben Holladay President of the Oregon and California Rail Road Company whose names are subscribed to the foregoing instrument as parties thereto personally known to me to be the individuals described in and who executed the said instrument and they severally acknowledged to me that he the said Ben Holladay as President of the Oregon and California Rail Road Company and he the said A. G. Cunningham as Secretary of the said Oregon and California Railroad Company executed the same as and for the Act and Deed of the said Oregon and California Rail Road Company freely and voluntarily and for the uses and purposes therein mentioned and the said A. G. Cunningham being by me duly sworn did depose and say that he is the Secretary of the Oregon and California Rail Road Company and resides at the City of Portland Multnomah County in the State of Oregon; that he is the legal custodian of and is acquainted with the corporate seal of said Company that the seal affixed to the within Mortgage is such corporate seal; that the same was so affixed by him as Secretary of said Company on the fifteenth day of April one thousand eight hundred and

Witness my hand and the great seal of the State at
office in the City of Salem State of Oregon this nine-
teenth day of April in the year of our Lord One Thou-
sand Eight Hundred and Seventy.

(United States Revenue Stamp 5 cents cancelled)

STATE OF OREGON,)
) ss No. 9563
County of Multnomah)

I, JOHN B. COFFEY, County Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement, Oregon & California Railroad Company to Faxon D. Atherton, et al. recorded in Book "C" page

745 Record of Mortgages has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 5th day of May A. D. 1913.

JNO. B. COFFEY, County Clerk.

DEFENDANTS' EXHIBIT 394

is a certified copy of a mortgage executed by The Oregon Central Railroad Company to Milton S. Latham, and Faxon D. Atherton, of date July 15, 1871, recorded October 14, 1871, at page 132 of Book "E", Records of Mortgages, and about the same time in each of the counties in which any part of the said Land Grant lands described therein was situated, which, omitting certificate of acknowledgment and certificate of Secretary of Oregon Central Railroad Company that each of the bonds secured by said mortgage had thereon the requisite United States Internal Revenue stamps, and that such bonds in the aggregate have placed thereon and all duly cancelled United States Internal Revenue stamps in the amount of \$4,395.00, is as follows:

This indenture made this fifteenth day of July in the year of our Lord One Thousand Eight Hundred and Seventy one between The Oregon Central Railroad Company a Body Corporate created by and under the Acts of The Legislature of the State of Oregon in that behalf made and provided party of the first part

and Milton S Latham and Faxon D Atherton of the City and County of San Francisco State of California parties of the second part.

Witnesseth: Whereas the said party of the first part in expressly authorized and empowered in and by the Acts of the Legislature of the State of Oregon and the Act of Congress of the United States approved May 4th, 1870 and entitled An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon "to borrow money for the objects and purposes in said Acts and each of them specified and for such authorized objects and purposes said party of the first part is desirous of borrowing a sum not to exceed Four Millions Three Hundred and Ninety-five Thousand Dollars and of securing payment of its corporate bonds or obligations issued or negotiated therefor by a mortgage or deed of trust to said parties of the second part as trustees as hereinafter set forth and provided. And whereas under and pursuant to the lawful authority conferred by said several Acts of the Legislature of the State of Oregon and of the Congress of the United States aforesaid, the Board of Directors of the said party of the first part have unanimously resolved in substance and legal effect, that said Oregon Central Railroad Company make, execute issue and deliver under its Corporate seal its Corporate Bond bearing even date herewith severally payable to the holder thereof at the Banking House of Messrs. Dabney Morgan and Company in the City of New York State of New York on the fif-

teenth day of July 1891, with interest from and after July 15th 1871 at the rate of seven per centum per annum payable at the same Banks semi-annually principal; and interest payable in gold coin as follows—that is to say: That twenty-nine Hundred and thirty (2930) of said bonds be made or issued for the sum of One Thousand Dollars each and that twenty nine Hundred and thirty (2930) of said bonds be made or issued for five hundred Dollars each in all five thousand eight hundred and sixty (5860) bonds in the aggregate amounting to Four Million Three hundred and Ninety-five Thousand Dollars and no more and that for the purpose of a more specific identification thereof said five thousand eight hundred and sixty (5860) bonds be numbered in a consecutive series from one to five thousand eight hundred and sixty both inclusive commencing with those of denominations of one thousand dollars and numbering them from one to two thousand nine hundred and thirty (2930) both inclusive and secondly with those of the denomination of five hundred dollars each and numbering them respectively from number two thousand nine hundred and thirty one to number five thousand eight hundred and sixty (5860) and that upon the face of each bond be printed or engraved a certificate signed by the parties of the second part thereto to the effect that such bond is one of the five thousand eight hundred and sixty bonds intended to be secured by these presents/ And whereas said Board of Directors have further unanimously resolved under and pursuant to lawful authority conferred upon said party of the first part by the

Acts aforesaid in substance and legal effect. that the President and Secretary of said party of the first part execute and acknowledge in its name and in its behalf and under its corporate seal and deliver to said parties of the second part hereto a mortgage or deed of trust conveying assigning and transferring to them in trust all its corporate real and personal property road depots stations, side tracks, wood yards, franchises and effects as security for the payment of said (\$5860) five thousand eight hundred and sixty bonds and the interest to grow due thereon and that such mortgage or deed of trust should contain all and singular the covenants provisos and conditions hereinafter set forth and that said mortgage and deed of trust and the five thousand eight hundred and sixty bonds thereby secured be severally dated the 15th day of July one thousand eight hundred and seventy-one.

And whereas the Congress of the United States of America did by an Act approved May 4th in the year of our Lord One Thousand eight Hundred and Seventy and entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon" grant to the Oregon Central Rail Road Company and to their successors and assigns the right of way through the public lands of the width of One Hundred feet on each side of said road and the right to take from the adjacent public lands the material for constructing said road also necessary lands for depots stations side tracks and the needful uses in operating the road not

exceeding forty acres in any one place and also each alternate section of the public lands not mineral excepting coal and iron lands designated by the odd numbers nearest said road to the amount of ten such alternate sections per mile on each side thereof not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of said Act and in case the quantity of ten full sections per mile could not be found on each side of said road within the limits of twenty miles other lands could be selected under the directions of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty five miles from the track of said road to make up such deficiency.

And whereas the said Oregon Central Rail Road Company party of the first part hereto in and by the terms of said Act of Congress of the United States of America approved May 4th 1870 is required to appropriate and set apart by mortgage or deed of trust to two or more trustees all the net proceeds of the sale of the said granted lands as a sinking fund to be kept invested in the Bonds of the United States or other safe and more productive Securities for the Purchase from time to time and the redemption at maturity of the first mortgage construction bonds of the Company on the road depots stations side tracks and wood, yards not exceeding thirty thousand dollars a mile of the Rail road payable in gold coin not longer than thirty years from date with interest payable semi-annually in coin not exceeding the rate of seven per centum per annum—no

part of the principal or interest of said fund to be applied to any other use, until said bonds shall have been purchased or redeemed. or cancelled and each of the said first Mortgage Construction Bonds to bear the certificate of the trustees setting forth the manner in which the same is secured and its payment provided for.

Now therefore this Indenture Witnesseth That the said Oregon Central Railroad Company the party of the first part hereto under pursuant to and by virtue of the express power and authority conferred upon, and vested in it by said several Acts of the Legislature of the State of Oregon and of the Congress of the United States of America aforesaid and under and pursuant to Resolutions duly passes and adopted by its Board of Directors and which are duly entered upon the official minutes of said Board and for and in consideration of the foregoing premises and especially for the purposes and with the intent of better and more effectually securing the payment of said five thousand and eight hundred and sixty bonds with the interest due and to grow due thereon and for and in consideration of one dollar and other moneys, lawful money of the United States of America by the said parties of the second part hereto in hand fully and truly paid to the said party of the first part hereto before the unsealing and delivering of these presents the receipt whereof is hereby acknowledged hath granted, bargained, sold assigned transferred and set over enfeoffed, conveyed and confirmed and by these presents doth grant, bargain, sell, assigns transfer and set over enfeoff convey and con-

firm to the said Milton S Latham and Faxon D Ather-ton the said parties of the second part, as Trustees and in trust and to the survivor of them and to their or his successors or successor. all and singular the Railroad of the said party of the first part heretofore constructed or hereafter to be constructed from Portland to Astoria and from a suitable point or junction near Forest Grove to the Yamhill river near McMinnville in the State of Oregon in all a distance of one hundred and forty-six and one-half miles. thirty thousand dollars of said bonds being issued to each mile thereof together with all its lands, tenements, and hereditaments acquired and appropriated or which shall hereafter be acquired and appropriated for the purpose of a right of way for its Railroad and all the appurtenances thereunto belonging.

And also all its lands acquired and appropriated or which shall hereafter be acquired and appropriated under and pursuant to the provisions of the Act of Congress of the United States of America approved May 4th 1870 and entitled “ An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon” and also its depots. engine house, car houses, station houses warehouses machine shops. work shops, superstructures, erections and fixtures and also all and singular the franchises rights and privileges now owned possessed or acquired or which shall hereafter be owned by said party of the first part and all lands, tenements hereditaments and real estate acquired and appropriated wheresoever and whatsoever or now owned by said party

of the first part or which shall hereafter be owned by it and also all and singular the locomotives tenders passenger cars freight cars and all other cars, carriages tools machinery and equipments for said Railroad and now owned or which shall hereafter be owned or acquired by said party of the first part and also all goods and chattels now owned or which shall hereafter be owned by said party of the first part and in any way relating or appertaining or belonging to or connected with said Railroad or running or operating the same together with all rents, issues income profits moneys rights benefits and advantages derived or to be derived had or received therefrom by said party of the first part in any way whatsoever.

To have and to Hold all and singular the premises rights, franchises, property real and personal hereinbefore and hereby assigned mortgaged pledged and conveyed or intended so to be and everypart and parcel thereof with all the appertenances unto the same belonging or in any wise appertaining unto them the said Milton S Latham and Faxon D Atherton the said parties of the second part hereto and to the survivor of them and to their or to his successors or successor and to their and his assigns in trust for the person or persons firm or firms, bodies politic or corporate who have heretofore or who shall hereafter at any time become the purchasers or holders or owner of any or either of said five thousand eight hundred and sixty bonds amounting in the aggregate to four million three hundred and ninety-five thousand dollars to-wit: \$30,000 per mile on said Railroad and no more subject to the terms

provisos and stipulations in said Five Thousand eight hundred and Sixty bonds contained and subject also to the provisions of the Act of Congress of the United States of America affecting or relating to or binding upon the party of the first part and also subject to the possession and management of said Railroad and property of said party of the first part and its successors or assigns so long as no default shall be made in the payment of either the interest or principal of said Five Thousand Eight Hundred and Sixty bonds or in or to either of them and so long as the party of the first part shall well and truly observe keep and perform all and singular the covenants agreements conditions and stipulations in said Five Thousand Eight Hundred and Sixty bonds and in this Indenture contained and set forth and which are to be observed kept and performed by and on the part of the said party of the first part.

And the said Oregon Central Railroad Company the party of the first part hath covenanted and agreed and by these presents doth for itself and its successors and assigns covenant and agree with the parties of the second part hereto and the Survivor and survivors of them and their and his successors and successor in manner and form following that is to say;

First. That said Oregon Central Railroad Company the party of the first part and its successors shall and will pay or cause to be paid all taxes, charges rates, levies and assessments imposed assessed or levied or which may hereafter be imposed assessed or levied upon

the premises franchises and property hereby mortgaged conveyed and assigned or intended so to be and shall and will at its own proper cost expense and charges do or cause to be done all acts and things necessary and proper to be done or performed in order to preserve and keep valid and intact the lien or incumbrance upon all and singular the aforesaid premises, property and franchises hereby created or intended so to be. And further that the lien or incumbrance created by the execution and delivery of this Indenture constitute and is in fact the first valid lien and incumbrance on the premises property and franchise therein described.

Second. That said Oregon Central Railroad Company the party of the first part and its successors shall and will at any time or times hereafter and from time to time execute, acknowledge and deliver under its corporate seal to the said parties of the second part and the survivors of them and their and his successors or successor, such other and further assurances deeds mortgages, obligations transfers indenture and instruments in writing and shall and will do and perform all such further or other acts or things as shall or may be proper or necessary or as their or his counsel learned in the law shall deem necessary proper or expedient for the better or more effectually securing the payment of said Five Thousand Eight Hundred and Sixty bonds and the interest due or to grow due thereon or for carrying into effect the true intent design objects and purposes of these presents or making preserving continuing and keeping valid and effectual, the lien and incumbrance

created or intended to be created by the execution delivery and recording of this Indenture upon all the property real and personal rolling stock equipments franchises and effects and especially the lands referred to in and by the said Act of Congress approved May 4th 1870 now owned possessed or acquired or which shall hereafter be owned possessed or acquired by said party of the first part.

Thirdly. And for the purpose of fully and more affectually securing the payment of the said Five Thousand Eight Hundred and Sixty bonds together with the interest due or to grow due thereon the said Oregon Central Railroad Company the party of the first part hereto for itself its successors hath pledged and hereby doth irrevocably pledge for the purposes and objects hereinbefore specified to and with the said parties of the second part and the survivors and survivor of them their and his successors and successor all and singular the net proceeds of the sales of the Lands granted to the party of the first part by the Act of Congress approved May 4th 1870 hereinbefore mentioned as a sinking fund to be kept invested by the parties of the second part in the Bonds of the United State or other safe and more productive securities for the purchase from time to time and the redemption at maturity of the First Mortgage Construction Bonds of the party of the first part hereinbefore particularly described and no part of the principal or interest of the said fund shall be applied to any other use until all the said bonds shall have been purchased or redeemed and cancelled.

And in the event that the principal of said First Mortgage Construction Bonds is not otherwise paid at the maturity thereof then the fund aforesaid which shall then have accrued from the proceeds of the sales of said lands and interest thereon shall be by said trustees parties of the second part or the survivor of them their or his successors or successor applied to the discharge and payment of any and all amounts both principal and interest then remaining due and unpaid on all such bonds and if such funds shall then be insufficient to discharge the whole amount then due on all such bonds the same shall then be applied rateably thereon according to the interest respectively of all such bondholders.

And it is further stipulated and agreed between the parties hereto that it there remains any deficit in the payment of the principal and interest due on said Five Thousand Eight Hundred and Sixty bonds after the whole of the funds aforesaid shall be applied thereon at the maturity thereof then the trustees parties of the second part hereto their successors or successor shall have full power and authority to sell and convey any and all lands then remaining undesposed of, which are included in the grant made by the Act of Congress aforesaid and which are hereby conveyed and intended to be conveyed in whole or in part as the said trustees may deem best for the interest of said bondholders and as may be prescribed or limited by any Act of Congress in force at the time of such sale and if there shall be no such prescription and limitation by law then said lands shall only be sold at public auction in the City of Port-

land in the State of Oregon to the highest bidder and no such sale shall be made unless notice of the time and place thereof shall first be given by publication for at least six weeks in a weekly newspaper of general circulation published in the City of Portland State aforesaid and the proceeds of such sale or sales shall be applied in like manner to the payment of any balance either principal or interest then remaining unpaid on such bonds aforesaid or any of them.

And it is hereby expressly covenant agreed and understood by and between the parties to these presents that notwithstanding the execution and delivery of these presents and of the covenants herein contained the said Oregon Central Railroad Company the party of the first part hereto shall have the right at any time after the execution of these presents to make sales of all and singular the lands granted to said Company by Act of Congress of the United States approved May 4, 1870 aforesaid in the manner and mode prescribed therefor by law and that the parties of the second part shall and will at any time after the delivery to them of this Indenture upon the request of the party of the first part and upon the receipt by the parties of the second part from the party of the first part of the price or consideration for said lands provided in and by said Act of Congress aforesaid make execute and deliver such releases discharges and assurances in respect to the lands for which they shall have received Consideration provided by law as the party of the first part or its counsel learned in the law may require for the purpose of making good

and sufficient title to said granted lands so sold to any and all purchasers thereof clear and free from all lien or incumbrance created by these presents and all net proceeds from the sales of all or any of the lands granted or intended to be granted by said Act of Congress shall be received and held jointly by the parties of the second part and the President of the party of the first part and shall be held subject to their control and shall be immediately and as soon as practicable after the same are received invested by said parties of the second part by and with the consent of the President of the party of the first part in United States Bonds or other more productive securities which securities shall be under the control of the parties of the second part and the said President of the party of the first part and shall be used solely in the Purchase from time to time and the redemption at maturity of said Five Thousand Eight Hundred and Sixty bonds and it is expressly understood and agreed that the lien created by this Indenture on said lands granted by said Act of Congress shall upon the sale of any portion of said lands as aforesaid and the payment of the purchase price thereof to the said parties of the second part cease so far as the same relates to the portion of the lands so sold. The said parties of the second part shall not have the right to make sale of any of said lands without the consent of the party of the first part.

Fourthly. That the said Oregon Central Railroad Company the party of the first part hereunto shall and will well and truly pay the said sums of money in said

Five Thousand Eight Hundred and Sixty bonds mentioned together with the semi-annual interest due or to become due thereon at the rate of seven per cent per annum at the times in the manner and at the place specified therein; and further said Oregon Central Railroad Company hereby covenants and agrees that in case it shall have for the space of thirty days made default in the payment of the semi-annual interest due or to become due on either or any of the said Five Thousand Eight Hundred and Sixty bonds or in case it shall fail to appropriate and set apart in the hands of the said parties of the second part all and singular the net proceeds of the sales of the said lands granted to the party of the first part by the Act of Congress of the United States as aforesaid as and for a sinking fund for and to be applied in payment or redemption of said Five Thousand Eight Hundred and Sixty bonds in the manner hereinbefore and in said Act of Congress specified then and in either of said cases after the lapse of said thirty days the whole principal sum mentioned in each and all of said Five Thousand Eight Hundred and Sixty bonds shall forthwith be and become due and payable and the lien or incumbrance hereby created for the security and payment thereof may be at once enforced anything in said bonds or in this Indenture to the contrary notwithstanding and that it shall and may be lawful and the said parties of the second part and the survivors or survivor of them and their or his successors or successor are hereby expressly authorized and empowered upon the request in writing of any two or more

holders of any of said Five Thousand Eight Hundred and Sixty bonds to enter into and upon and take actual possession of all and singular the railroad premises franchises, rights, property real and personal and effects hereby granted conveyed, assigned mortgaged pledged, transferred and set over or intended so to be as a security for the payment of said Five Thousand Eight Hundred and Sixty bonds and by themselves or their agents to take collect and receive the tools earnings income and profits thereof and every part thereof or to be derived therefrom and that they, said parties of the second part and the survivors and survivor of them and their and his successors and successor shall and may proceed and are hereby expressly authorized and empowered thereupon but within such reasonable time as they may deem proper not less than sixty days and upon and after public notice by advertisement for at least six weeks in one or more newspapers published in the cities of New York State of New York and San Francisco State of California and Portland State of Oregon. to proceed and sell at public auction in said city of Portland to the highest bidder as well all and singular the said railroad rights and franchises as all other the property real and personal and premises hereby granted conveyed assigned mortgages pledged transferred and set over, or intended so to be, and all benefit and equity or redemption whatsoever of the said Oregon Central Rail Road Company the said party of the first part hereto of in and to the same and every part and parcel thereof together with the benefit of the franchise be-

longing to or connected therewith. And as the attorney or attorneys of the said Oregon Central Rail Road Company the said party of the first part hereto for that purpose by these presents duly appointed and constituted the said parties of the second part and the survivors and survivor of them and their and his successors and successor shall have full power and authority to make, execute and deliver to the purchasers thereof a good valid and sufficient deed or deeds conveyance or conveyances assignment or transfer in fee simple or otherwise of said Railroad lands tenements and real estate and of all and singular the said personal or other property rights and premises hereby granted assigned transferred or conveyed as aforesaid, which sale so to be made as aforesaid and which deeds, conveyances assignments and transfers so to be made and delivered as aforesaid shall operate to convey assign, transfer and vest in said purchaser or purchasers all the rights title, interest and estate whatsoever reversionary or otherwise of the said Oregon Central Rail Road Company the party of the first part of in and to the premises so sold conveyed assigned or transferred and which said sale so to be made shall be a complete and perpetual bar both at law and in equity against the said Oregon Central Rail Road Company the party of the first part its successors and assigns and all persons or parties claiming by from or under it or them in anywise or manner whatsoever. and that out of the moneys or proceeds arising either from said tolls, earnings or receipts of said Railroad or premises or at or from said sale so

to be made as aforesaid after first deducting the expenses disbursements costs, charges and counsel fees in and about the conducting of said sale or running and operating said Railroad that they the said parties of the second part and the survivors and survivor of them their and his successors or successor shall pay said five thousand eight hundred and sixty bonds or so many as shall be then outstanding and unpaid together with all arrears of interest then due or owing upon the same rendering or paying over the surplus of all such moneys if any there shall be to the said party of the first part hereto its successors or assigns.

This Indenture further witnesseth: and these presents are upon the express condition that upon payment in full of said Five Thousand Eight Hundred and Sixty bonds and the interest due thereon then these presents and the estate hereby granted shall cease and be void and the Oregon Central Rail Road Company the party of the first part shall be immediately and fully reinvested with the said premises hereby granted in law and in fact without any entry or other act whatever and that until default shall be made by said party of the first part hereto either in payment of said Five Thousand Eight Hundred and Sixty bonds or in payment of the interest due or to grow due thereon as aforesaid or in appropriating and setting apart in the hands of the parties of the second part their successors or successor all and singular the net proceeds of the sales of said lands, granted by the Act of Congree aforesaid as a sinking fund to be kept invested in Bonds of the United

States or other safe and more productive securities for the purchase from time to time and the redemption at maturity of the First Mortgage Construction Bonds of the Construction of the Company hereinbefore mentioned and described or in keeping and observing any of the covenants and agreements hereinbefore contained the said Oregon Central Railroad Company the party of the first part and its successors and assigns shall remain in the quiet and peaceful possession and enjoyment of the said premises and property hereby granted or conveyed or intended so to be as aforesaid.

This Indenture further witnesseth; and it is hereby expressly agreed that in case of the death resignation incapacity or inability of any or either of the parties of the second part to act in the execution of any of the trusts aforesaid, then it shall and may be lawful and the remaining acting surviving or competent Trustee or Trustees and the President for the time being of the said party of the first part are hereby empowered to select and appoint by an instrument in writing under their hands and seals which shall be recorded in the same office where this Indenture shall be recorded one or more competent persons to fill the vacancy or vacancies so created in the manner aforesaid and that such person or persons so appointed trustee or trustees shall have and possess and be vested with the same rights and powers as a trustee or trustees as he or they would have had and possessed or been vested with had he or they been originally made a party or parties of the second part to this Indenture and shall perform the same duties

in all respects and until such appointment shall be so made in the manner aforesaid and notwithstanding any vacancy or vacancies as aforesaid said remaining surviving acting or competent trustee shall have full power and authority to execute each and all the trusts hereby created and their and his acts in the premises shall be as legal, valid and effectual in all respects and to all intents and purposes as if the same acts has been done and performed by all the parties hereto of the second part. and in case said appointment shall be made in the manner aforesaid party of the first part hereby covenants to make, execute and deliver all such other or further instruments deeds, Indenture or assurances as may be necessary to enable the person or persons so appointed to execute the trusts hereby created and declared as fully and perfectly in all respects as he or they could have executed the same—if originally made a party or parties of the second part to this Indenture.

In witness whereof the said Oregon Central Railroad Company the party of the first part hereto hath caused these presents to be subscribed by its President and attested by its Secretary and hath under the express authority of the Resolution of its Board of Directors caused its corporate seal to be hereunto affixed and the parties hereto of the second part for the purposes of signifying their acceptance of the trusts herein and hereby created have hereunto subscribed their names and affixed their respective seals; All done the day and year first above written.

(Signed)

Ben Holladay

President of the Oregon Central Rail Road Company
R H Towler

Secretary of the Oregon Central Rail Road Company
(Corporate Seal)

Milton S Latham (Seal)

F D Atherton (Seal)

Trustees.

Sealed and delivered in presence of

A G Cunningham

E A Cunningham

County of Multnomah)
) ss
State of Oregon)

Be it remembered that on this fifteenth day of July A D One Thousand Eight Hundred and Seventy One before me the undersigned a Notary Public in and for the said county of Multnomah and State of Oregon duly commissioned and qualified personally came Ben Holladay President of the Oregon Central Rail Road Company and R H Towler Secretary of the Oregon Central Railroad Company whose names are subscribed to the foregoing mortgage or deed of trust as parties thereto and as the President and Secretary of said Oregon Central Railroad Company both personally known to me to be the individuals named and described in and who executed the said mortgage or deed of trust and they severally acknowledged to me that he the said Ben Holladay as President of the said Oregon Central Railroad Company and he the said R H Towler as secre-

tary of the said Oregon Central Railroad Company executed the foregoing mortgage or deed of trust as and for the fact and deed of the said Oregon Central Railroad Company freely and voluntarily for the uses and purposes therein mentioned and he the said **R H Towler** being by me duly sworn did depose and say that he is the secretary of the said Oregon Cenral Rail Road Company and resides in the City of Portland Multnomah County in the State of Oregon that he is the legal custodian of and has in his possession and and is acquainted with the corporate seal of the said Oregon Central Railroad Company. That the seal affixed to the within and foregoing mortgage or deed of trust is such corporate seal That the same was affixed by him as Secretary of said Company on the fifteenth day of July A D One Thousand eight hundred and Seventy-one by order of the Board of Directors of said Company and that he signed his name as secretary thereto by the like order of the said Board of Directors.

In witness whereof I have hereunto subscribed my name and affixed my Notarial seal the day and year above first written at the City of Portland Multnomah County State of Oregon.

(Notarial Seal)

(Signed) Andrew J Moses

Notary Public in and for the County of
Multnomah State of Oregon.

U S Int. Rev. Stamp
05c Cancelled

State of Oregon)
County of Multnomah) ss

I, R H Towler Secretary of the Oregon Central Railroad Company do hereby certify that each of the Five Thousand eight hundred and Sixty bonds which this mortgage or trust deed is given to secure has placed upon it the requisite United States Internal Revenue Stamps as required by law. That such bonds in the aggregate have placed thereon and all duly cancelled United States Internal Revenue stamps to the amount of Four Thousand three hundred and Ninety-five dollars.

Witness my hand and the seal of said corporation.

(Corporate Seal) (Signed) R H Towler

U S Int. Rev. Stamp Secretary of the Oregon Central
05c cancelled Railroad Company

State of Oregon)
) ss
Department of State)

I S F Chadwick, Secretary of the State of the State of Oregon do hereby certify that Andrew J Moses whose name is subscribed to the foregoing and annexed certificate of acknowledgment to said mortgage or deed of trust was at the time of taking such acknowledgment and signing such certificate towit: on the fifteenth day of July A D One Thousand Eight Hundred and Seventy-one a duly commissioned qualified and acting Notary Public in and for the County of Multnomah and

executed the said Instrument fully and voluntarily as such trustees for the uses and purposes therein mentioned and that the same was their free act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal as such commissioner at my office in the City and County of San Francisco and State of California this Fifteenth day of August A D One Thousand Eight Hundred and Seventy-one.

(Commissioners Seal) (Signed) F J Thibault
Commissioner for Oregon in
California.

Received for Record October 14th, 1871.

STATE OF OREGON,)
) ss No. 9553
County of Multnomah)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement, Oregon Central R. R. Co. to M. S. Latham, et al., recorded in Book E page 132 Record of Mortgages, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto
set my hand and affixed the seal of said Court, this 3rd
day of May, A. D. 1913.

(Seal) JNO. B. COFFEY, County Clerk.

DEFENDANTS' EXHIBIT 395

is a certified copy of a mortgage, bearing date January 1, 1881, between the Oregon and California Railroad Company, party of the first part, and Richard Koehler and Heinrich Hohenemser, of the second part, and others, recorded February 28, 1881, in Book "X," page 346, in the Records of Mortgages, Multnomah County, Oregon, and thereafter, about the same time, in the Records of Mortgages of all other counties in which any part of the granted lands described therein is situated, and said exhibit is as follows:

United States v. Oregon &
California R. R. Co. et al.
Defendants' Ex. 395

Page 346, Book "X."

The Oregon and California Railroad Co with Klaas Van Oterendorp, Philip N Lilienthal and others.

This indenture Made this first day of January in the years One Thousand eight hundred and eighty-one between the Oregon and California Railroad Company a corporation organized and existing under the laws of Oregon and hereinafter called the Company of the first part. Richard Koehler of Portland in Oregon and Heinrich Hohenemser of Frankfort on the Main in Germany Trustees as hereinafter mentioned of the second part. The said Richard Koehler and Heinrich Hohenemser Trustees as hereinafter mentioned of the third part. The said Richard Koehler and Heinrich Hohen-

emser and Philip B Bonn Paul Reinganum, Herman Koehler Ludwig Gruenebaum and Carl Pollitz all of Frankfort aforesaid. Adolph Otto of Heilbron in Germany and Michael Benjamin of Munich in Germany a committee for the protection of the holders of the seven per cent Oregon and California Railroad First Mortgage Bonds authorized to act on behalf of said bondholders by their association of the fourth part and Klaas Van Oterendorp and Philip N Lilienthal of the City and County of San Francisco in California hereinafter called the Trustees of the fifth part.

Whereas said Oregon and California Railroad Company by resolution of its Board of Directors approved by resolution of a general meeting of its Stockholders and in pursuance of its Articles of Incorporation and By-Laws and with consent of the holders of the now existing First Mortgage Bonds of said Company as hereinafter set forth has resolved to make an issue of New First Mortgage Bonds as hereinafter described to the amount of Two Million (2,000,000) Dollars in gold or the equivalent in German Money in order to provide for the payment of a portion of its present indebtedness and to raise money by the sale of such bonds for the general purpose of the Company and to secure the payment of said Bonds and the interest thereon in the manner herein provided.

And whereas by an indenture dated the 15th day of April 1870 said Oregon and California Railroad Company mortgaged to Faxon D Atherton and Milton S

Latham all its Railroad from Portland to the boundary line of the States of Oregon and California then built or thereafter to be built with its equipment and appurtenances to secure an issue of 18450 First mortgage Bonds amounting in all to the sum of ten million Nine Hundred and fifty thousand dollars (\$10,950,000) and interest thereon evidenced by interest warrants or coupons thereto annexed which Bonds have been negotiated and are still due with large arrears of interest and are now represented and controlled by said Heinrich Hohenemser and others parties hereto of the fourth part except about thirty two thousand eight hundred dollars (\$32,800) in amount thereof supposed to have been lost or accidentally destroyed and except thirty thousand seven hundred dollars (\$30700) in amount thereof which have been acquired by the sinking fund hereinafter mentioned.

And whereas said Richard Koehler and Heinrich Hohenemser have succeeded said Latham and Atherton as trustees of said Mortgage and are now the Trustees thereof.

And whereas; by another Indenture also dated the 15th day of April 1870 said Company granted and conveyed to said Milton S Latham and Faxon D Atherton and William Norris all the lands granted by the United States to aid in the construction of its said Railroad upon Trusts for sale of such lands and for the creation with the proceeds of such sale of a sinking fund for the payment at maturity of the bonds secured by the indenture of Mortgage lastly mentioned.

And whereas Said Richard Koehler Heinrich Hohenemser and Charles Edward Bretherton have succeeded said Lathem Atherton and Norris and the said Richard Koehler and Heinrich Hohenemser are now Trustees of said Indenture of Trust and of the sinking fund thereby created the said Bretherton having resigned and delegated the said trust to the two remaining trustees to-wit: Said Richard Koehler and Heinrich Hohenemser and such resignation having been duly accepted.

And whereas. said Heinrich Hohenemser and others the said Committee parties hereto of the fourth part being desirous that the said issue of new First Mortgage Bonds of the said Oregon and California Company should be made for the purpose aforesaid have requested the said Richard Koehler and Heinrich Hohenemser as Trustees of said two Indentures dated April 15th 1870 to join in and execute these presents for the purpose of postponing the lien of said Indentures of Mortgage and Trust dated the 15th day of April 1870 to the lien or charge intended to be created by these presents which Richard Koehler and Heinrich Hohenemser have agreed to do upon said Heinrich Hohenemser and others Committees as aforesaid parties hereto of the fourth part. testifying their request and consent thereto by executing these presents and causing the bonds and coupons or interest warrants held by them to be stamped with a notice of such postponement in the form hereinafter set forth.

And whereas there has been stamped by the order of

said Heinrich Hohenemser and others Committee as aforesaid parties hereto of the fourth part, upon each of the bonds controlled and represented by them a certificate in the following form.

This is to certify that by an indenture of Mortgage and Trust made by the Oregon and California Railroad Company to Klaas Van Oterendorp and Philip N Lilienthal to secure an issue of New First Mortgage Bonds and dated the 1st day of January 1881 the liens of the mortgage and Deed of Trust securing the within bond have been by the consent and at the request of the undersigned, representatives and controllers of the said Bond postponed to the lien or charge created by said indenture of the Mortgage and Trust to said Klaas Van Oterendorp and Philip N Lilienthal dated this 1st day of January 1881.

Heinrich Hohenemser
Philipp B Bonn
Paul Reinganum
Herman Koehler
Richard Koehler
Adolph Otto
Michael Benjamin
Ludwig Gruenebaum
Carl Pollitz

A Committee for the protection of the holders of the seven per cent Oregon and California Railroad First Mortgage Bonds being duly authorized thereto by the association of such bondholders.

And upon each of the coupons or interest warrants there has been stamped by the like order and direction a memorandum in the following form.

“Subject to prior lien of New First Mortgage Bonds.” And whereas said Bonds intended to be secured by these presents and to be known as new First Mortgage Bonds of the Oregon and California Railroad Company together with the warrants for interest thereon and the certificate of said Trustees thereupon have been prepared and bear even date herewith and are two thousand five hundred (2500) in number whereof fifteen hundred (1500) are for one thousand dollars (\$1000) or four thousand two hundred and fifty (4250) mark and are numbered one (1) to fifteen hundred (1500) inclusive and one thousand (1000) are for five hundred dollars (\$500) or two thousand one hundred and twenty five (2125) mark numbered fifteen hundred and one (1501) to twenty five hundred (2500) inclusive and which bonds and interest warrants are in the following form except that in those for five hundred dollars (\$500) the amounts of principal and interest are varied accordingly.

United State of America, State of Oregon.

New First Mortgage Bond Oregon and California Railroad Company of Portland Oregon.

Interest six per cent per annum Principal and interest payable in gold coin in New York or Frankfort A M. Principal repayable by a sinking fund of one per cent per annum.

7686

O. & C. R. R. Co., et al.

\$1000

No

M4250

The Oregon and California Railroad Company for value received hereby promises to pay to the bearer on the 1st day of January 1919 either the sum of one thousand dollars (\$1000) in American gold coin at the financial agency of the Company in New York or the sum of Four thousand two hundred and fifty (4250) mark in money of the German Empire at the financial agency of the Company in Frankfort A M in Germany at the option of the bearer and to pay in the meantime interest thereon at the rate of six per cent per annum half yearly on the first days of July and January in each year the first of said payments being for all interest accruing to the 1st day of July next from the date hereof and the remaining payments being at the option of the bearer for each half year either thirty dollars (30) in American gold coin payable at the financial agency of the Company in the city of New York or one hundred and twenty seven and fifty-one hundredths (127.50) mark payable at the financial agency of the Company in Frankfort A M free of all taxes in the United States either State or Federal but only upon presentation and surrender as they mature of the seventy six interest warrants annexed.

This bond is one of two thousand five hundred Bonds of like form and date and numbered one to twenty five hundred (2500) inclusive whereof one thousand five hundred (1500) are for one thousand dollars (\$1000) or four thousand two hundred and fifty (4250) mark

and one thousand (1000) are for five hundred dollars (\$500) or two thousand one hundred and twenty five (2125) mark secured by an indenture of Mortgage of even date herewith made by the Oregon and California Railroad Company to Klaas Van Oterendorp and Philip N Lilienthal and recorded in the office of the County Clerk of Multnomah County in Oregon and in all other counties in which any part of the property therein comprised is situated whereby the said Company has conveyed to said Klaas Van Oterendorp and Philip N Lilienthal all its railroads between East Portland and Roseburg and Portland and Corvallis in the State of Oregon embracing the railroads heretofore known as the Oregon and California Railroads running between East Portland and Roseburg and being in length 198 miles or thereabouts The Oregon Central Railroad running between Portland and St Joseph and being in length 47 miles or thereabouts and the Western Oregon Railroad Running between St. Joseph and Corvallis and being in length 50 miles or thereabouts being in all 295 miles long and thereabouts together with all the rollong stock right of ways, depots, warehouse and dock and other property appurtenant to said railroad and described in said Mortgage and the lands granted by the United State in aid of the construction of such railroads and not yet sold or disposed of estimated to amount to one million and a half (1,500,000) acres as a First Mortgage on said Railroad and rolling stock and a Mortgage on said warehouse and dock property and upon so much of said lands as may be unsold at the time

of any enforcement thereof to secure the payment of said two thousand five hundred (2500) Bonds and interest thereon.

And said Oregon and California Railroad Company further promises to pay forthwith upon demand the amount of this Bond as aforesaid in case said Oregon and California Railroad Company shall fail for six calendar months to pay any interest warrant or any of said two thousand five hundred (2500) bonds when the same becomes due or shall fail to pay to said Klaas Van Oterendorp and Philip N Lilienthal or the trustees for the time being of said Indenture of Mortgage on the 1st day of July 1885 and on every 1st day of July thereafter so long as any of said Bonds shall remain unpaid the sum of twenty thousand Dollars (\$20,000) in American gold coin at the office of the Company in the city of New York as a sinking fund to be thereafter applied together with interest on any Bonds therefore belonging to said sinking fund for the equal benefit of all said Bonds by redemption of such thereof as shall be drawn by lot or the previous 1st day of April at the financial agency of the Company in New York by said Trustees or one of them or their duly authorized agent in the presence of a Notary Public and such default in payment of interest warrants or sinking fund payment shall not have been waived by a majority in amount of the holders of the Bonds then outstanding in manner in said indenture of Mortgage provided.

The number of the bonds so drawn shall be pub-

lished by notice posted up in the financial agencies of the Company in New York and Frankfort A M and by an advertisement in Seven Newspapers of general circulation published respectively in New York, London, Amsterdam, Frankfort Munich Berlin and Basle and on publication of such notice the principal of the Bonds so drawn shall become payable on the first day of July then next and said bonds so drawn shall bear no interest after that date unless in presentation thereof at the financial agency of the Company in New York or Frankfort A M payment of said bonds or any interest then due thereon shall be refused.

The Company reserves the right of making larger payments to such sinking fund and of paying off on any 1st day of July (notice being given as aforesaid on or before the first day of April previous) the whole of the outstanding bonds.

This bond is not valid unless authenticated by the execution by the Mortgage Trustees of the certificate endorsed hereon.

The company may but shall not be obliged to require proof of the ownership of any interest Warrant before paying the same and the payment thereof to the person presenting the same shall in any case fully discharge the Company.

In witness whereof said Company has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Secretary the 1st day of January 1881 Each of said Bonds being duly so

signed sealed and attested.

Form of Interest Warrant.

\$30.

M 127 .50/100

Interest warrant No one due July 1st, 1881 on New First Mortgage Bond of the Oregon and California Railroad Company No 1 for \$1,000 (unless said bond shall have been previously redeemed and being either thirty dollars (\$30) in American Gold Coin payable free of all taxes in the United States or Federal at the financial agency of the Company in New York or one hundred and twenty seven mark fifty pfennings payable at the financial agency of the company in Frankfurt A M in money of the German Empire.

A G CUNNINGHAM

Treasurer

Form of Trustees Certificate.

We hereby certify that the within bond is one of two thousand five hundred (2500) bonds and no more of the Oregon and California Railroad Company secured by the within mentioned Indenture of Mortgage dated January 1, 1881 and made by said Oregon and California Railroad Company to us as Trustees.

K Van Oterendorp)

P N Litienthal) Trustees

And whereas; by reason of the lapse of time the date of the execution of this Indenture of Mortgage and

Trust Deed is subsequent to the day of which it bears date yet nevertheless this indenture of Mortgage and Trust Deed in the Indenture of Mortgage referred to in the Bonds hereinbefore mentioned, the form whereof is hereinbefore set forth and is made and executed by and between the parties hereto as and for the Indenture of Mortgage and trust deed securing and intended to secure said Bonds as in said Bonds is mentioned and recited.

Now this indenture witnesseth: That in pursuance of said resolutions and to secure the punctual payment of said Bonds and the interest thereon said Oregon and California Railroad Company doth hereby grant, bargain, sell, assigns transfer and convey unto said Klaas Van Oterendorp and Philip N Lilienthan their heirs, assigns and legal successors as trustees of these presents all and singular the railroad lines of said Oregon and California Railroad Company now constructed and in operation between East Portland and Roseburg and between Portland and Corvallis in the State of Oregon including the railroads heretofore known as the Oregon Central and Western Oregon Railroads in all about two hundred and ninety five (295) miles in length running through the Counties of Multnomah, Clackamas, Marion, Linn, Lane, Douglas Washington Yamhill, Polk and Benton in said state together with the ferry, ferry boats and landings connecting the same at Portland and East Portland and all lands rights of way, easements and premises now acquired or appropriated or which may hereafter be acquired or appropriated

for the purpose of the right of way of said Railroad or for grounds for side tracks depots, warehouses tanks, round houses, stock y-ards or any other Railroad purposes and all lands heretofore granted by the United States in aid of the construction of the said Railroads between the termini aforesaid and not yet sold estimated to be in amount about one and a half million of acres and intended to be more particularly identified as the same are patented by the United States in manner hereinafter provided and together with all rails, spikes ties timber iron switches frogs depots, warehouses round houses, machine shops bridges trestle work and all other buildings or structures belonging to or used for the Maintenance or operation of said Railroads including all the offices docks and warehouses of said Company in Portland and East Portland and all locomotives, cars and other rolling, stock railroad supplies fuel tools and machinery now used in the maintenance or operation of said railroads and which rollong stock is more particularly described and enumerated in the schedule thereof annexed hereto and all other appurtenanves of said railroad between the termini aforesaid and the franchise, to operate the same and all the income earnings and profits of said Railroads and lands and all the rights, claims estate and interest of said Oregon and California Railroad Company therein and thereto.

To have and to hold the said railroads with their respective rolling stock equipment and appurtenances and the lands and other premises as above described unto the use of said Klaas Van Oterendorp and Philip

N Lilienthal their heirs, assigns and legal successors as trustees of these presents as joint tenant in common free from all prior liens and encumbrances whatsoever save and except a balance of purchase money due upon part of the dock and warehouse property of the Company in Portland and East Portland amounting to about forty thousand, (\$40,000) dollars and a sum of seventy thousand (\$70,000) dollars or therabouts and interest due to the European and Oregon Land Company and payable out of the net earnings of the lands granted by the United States to aid in the construction of the railroad between East Portland and Roseburg in trust nevertheless for the equal benefit and security pro rata of every holder of any of said, two thousand five hundred (2500) Bonds intended to be secured hereby without any priority of any one bond over another by reason of earlier issue or negotiations and for the uses and purposes and with all the rights and powers and subject to the provisions, agreements, covenants and stipulations contained in the following articles:

Article 1.

The said Oregon and California Railroad Company hereby covenants with said Klaas Van Oterendorp and Philip N Lilienthal that it will pay all taxes assessed against said Railroads lands and premises and will keep the Railroads, rolling stock and premises herein comprised in good order and repair and will reconstruct replace and restore all such or so much and such parts thereof as may be worn out wrecked destroyed or dis-

placed and will pay the principal of said twenty five hundred (2500) bonds and all interest due thereon at the times and places and in the manner in said Bonds and the interest warrants annexed thereto respectively specified.

Article 2.

And further, that if any interest warrant or anyone of said Bonds shall not be paid on presentation as therein provided and shall remain unpaid for six calendar months and such default shall not be waived in manner hereinafter specified then the said Company will pay on demand at the places and in the moneys in said Bonds specified the principal of each and all of said Bonds then remaining due.

Article 3.

And further that said Oregon and California Railroad Company will on the 1st day of July 1885 and on every first day of July thereafter pay it the financial agency of the Company in New York to said Klaas Van Oterendorp and Philip N. Lilienthal or other the trustee or trustees for the time being of these presents the sum of twenty thousand dollars (\$20,000) in American gold coin.

Article 4.

And further that in case default shall be made in any such payment of twenty thousand dollars (\$20000) specified in the last article or any part thereof for six calendar months and such default shall not be waived as

hereinafter provided then said Company will forthwith pay the principal of each and all of said bonds then remaining due.

Article 5.

Until default in any payment required by the previous articles said Company shall freely possess the said Railroads lands and premises and the income earnings and profits thereof and may contract to sell and dispose of the lands granted by the, United States and of all other lands owned by the Company not required for the maintenance and operation of its railroads and received the proceeds thereof but no conveyance or release of said lands or any of them shall be valid and effectual unless such conveyance or release shall be executed by said Trustees or one of them or by their attorney or attorneys in fact thereunto lawfully authorized.

Article 6.

Said Klaas Van Oterendorp and Philip N Lilienthal shall hold the said payment of twenty thousand dollars (\$20000) per annum as well as all interest they may receive upon Bonds purchased by them upon previous payments of said annual sum as a sinking fund to discharge and extinguish the whole of said twenty five hundred (2500) Bonds by annual redemption in the following manner. On the 1st day of April 1885 and on the 1st day of April in every year thereafter or as soon thereafter as may be said Klaas Van Oterendorp and Philip N Lilienthal or the Trustee or Trustees for the time

being of these presents shall cause to be drawn at the financial agency of the Company in New York in the presence of a Notary Public out of the whole number of Bonds then outstanding excluding those already belonging to the sinking fund such a number of Bonds as will on the 1st day of July then next ensuing be equal at par to said annual payment of twenty thousand dollars (\$20000) and such additional sum as said Trustees shall be entitled to receive on account of the interest warrants on the bonds previously acquired by them for said sinking fund a due proportion of said Bonds being drawn for each class so that on the 1st day of July 1885 fifteen bonds for one thousand dollars (\$1000) and ten Bonds for five hundred dollars (\$500) will be redeemed by said sinking fund and a larger number on every 1st day of January thereafter.

Article 7.

Said Trustees shall publish by notice conspicuously posted upon or before the 30th day of April then next ensuing at the financial agency of the Company in New York and at the financial agency of the Company in Frankfort A M and so remaining until the 1st day of July then next ensuing and by an advertisement in seven newspapers of general circulation published respectively in New York London, Amsterdam, Frankfort, Munich Berlin and Basle the numbers of the bonds so drawn for redemption and shall pay such bonds at the option of the holder at the financial agency of the Company in New York or the financial agency of the

Company in Frankfort A M and in American or German money respectively on the first day of July then next ensuing or so soon thereafter as said Company shall pay over the sums hereby stipulated to be paid for the purpose.

Article 8.

When any Bonds shall have been drawn as aforesaid and notice shall be duly given as aforesaid of the numbers of the Bonds so drawn for redemption then each Bond so drawn shall become payable on the first day of July then next ensuing and shall draw no interest after that day unless on presentation thereof at the financial agency of the Company in New York or the financial agency of the Company in Frankfort A M Payment of said Bond or any interest due thereon shall be refused.

Article 9.

The Bonds redeemed out of the sinking fund by said Trustees shall be cancelled by them but the interest warrants shall remain in full force and shall be regularly presented by the Trustees and the amount thereof collected for the benefit of the sinking fund.

Article 10.

Said Company shall have the right to give to said Trustees on or before the 1st day of April in any one year notice in writing that they will pay to said Trustees any larger sum than the annual payment herein

before provided for and said Trustees shall then draw a proportionally larger number of Bonds which shall become payable and cease to bear interest as provided in the previous Articles and said Company may even give such notice for the payment of all then outstanding Bonds. And thereupon said Trustees shall publish by notice and advertisement as in case of Bonds drawn that all outstanding Bonds will be redeemed and they shall become payable on the first day of July then next ensuing as if drawn for the redemption by the sinking fund.

Article 11.

When all of said Two Thousand and five hundred (2500) Bonds shall be redeemed by said sinking Fund or acquired and cancelled by said Company and handed to said Trustees so cancelled they shall enter satisfaction of record of these presents.

Article 12.

In case said Company shall fail to keep the said Railroads rolling stock equipment and premises herein comprised in good order and repair or in case default shall be made in any payment of any interest warrant on any of said Bonds or of the said sum of twenty thousand dollars (\$20000) to be paid for a sinking fund as aforesaid or any part thereof and such default shall continue for six calendar months or of any taxes, assessed against said Railroads land and premises it shall be lawful for said Trustees to take possession personally or

by their agent, or agents of said Railroads rolling stock and equipment and the lands and other premises hereby conveyed and to operate the said Railroads and manage the same and collect and receive the income, earnings and toll thereof and the proceeds of lands contracted to be sold. and said Company hereby covenants and agrees that it will on demands surrender such possession and permit said Trustee to use and possess said Railroad rolling stock and premises, without interruption or disturbance and will permit and suffer said Trustees to collect and get in all freight moneys ticket, balance or other earnings and the purchase moneys of all lands, sold either then due or thereafter becoming due and in case it may be necessary or may be deemed advisable by said Trustees to take legal proceedings for foreclosure of this Mortgage or to obtain possession of said premises in pursuance of the provisions of this article they shall be entitled to the appointment of a Receiver or Receivers to be nominated by them or to be themselves nominated and appointed Receivers as they may think most expedient.

Article 13.

Said Trustees when in possession of said Railroads lands and premises shall have the right as irrevocable attorney or Attorneys of said Company to bring or defend in the name of the said Company any actions for the collection of income freight moneys, ticket balances, or other earnings or unpaid purchase money for lands sold or for obtaining or defending the possession of any

property subject to the lien or trusts of these presents or for the condemnation of lands required for the maintenance or operation of said Railroads or in any manner affecting the maintenance thereof,

Article 14.

Said Trustees are hereby authorized in their discretion to accept possession of said Railroads with the rolling stock lands and appurtenances herein comprised although no such default as aforesaid shall have been made if said Company shall offer to give up possession to them and thereupon to manage and operate the same and collect the income and earnings thereof as hereinbefore provided.

Article 15.

It shall be the duty of said Trustee to take possession of said Railroads lands and premises after any such default as aforesaid upon written requisition made to them for such purposes by the holders of not less than one quarter in amount of said Bonds then outstanding.

Article 16.

Said trustees shall have full power from time to time for the purpose of enforcing and administering the trusts and powers of these presents and for operating the managing or keeping in good order and repair the said Railroads rolling stock lands and premises to hire and employ such managers officers, clerks, agents, attorneys and assistants as they shall deem useful or necessary and

to defray all expenses of such employment and of otherwise executing the trusts of these presents and to pay any taxes, assessed upon the trust premises or any part thereof or any other prior charges thereon out of any moneys coming to their hands and in case said Trustees shall have no funds in their hands and shall make any payments either for such purposes or in any other manner for the protection or preservation of the trust premises (whether said trustees shall be in possession of the same or not) the amount so paid together with interest thereon at the rate of ten (10) per centum per annum shall be a first charge on the trust premises and the earnings, income and proceeds thereof and in case said Company shall fail on demand to repay said Trustees any amount paid by them as aforesaid with interest at the rate aforesaid they may enter upon and take possession of said Railroads lands and premises in the manner as if said Company had made default in payment of interest on the Bonds hereby secured and retain possession and receive the income, earnings and proceeds thereof until they shall have recouped themselves the amount so paid with interest as aforesaid.

Article 17.

After any such default as aforesaid in payment of interest or sinking fund payments or any part thereof shall have been made and such default shall have continued for on year and shall not have been waived as hereinafter provided or in case the principal of any of said Bonds shall not be paid on the 1st day of July

1920 it shall be the duty of said Trustees to forthwith proceed to enforce this security and to sell said Railroads rolling stock equipment and appurtenances and the land and premises comprised herein in one lot or in more than one lot or parcel and at one time or at different times and for cash or on reasonable credit payment therefor being secured on the property sold and otherwise upon such terms and in such manner as said Trustees may in their discretion think best.

Article 18.

Such sale or sales may be made either without suit by said Trustees or their duly authorized agent by public auction at the door of the Court House of Multnomah County in Oregon after notice of such sale shall have been published at least once a week for four consecutive weeks in the "New York Times" and Frankfurter Zeitung or in case said papers or either of them shall not be then published then in some other paper or papers of general circulation published in the same place or places and selected by said Trustees and in case said sale shall be adjourned the like four weeks notice shall be given of the adjourned sale or such sale may be made judicially by action or suit brought by said Trustees for the foreclosure of this Mortgage or enforcement of the liens hereby created or administration of the trusts of these presents as said Trustees may deem most expedient.

Article 19.

The moneys received from the net earnings of said

railroads when in possession of said Trustees shall be applied in the following order. In the first place in the payment of the cost and expenses of the execution of the trusts of these presents and the management and operation of said Railroads and the protection and preservation of the trust premises including a reasonable compensation to said Trustees (in addition to the salary herein provided for) and the fees of counsel and Attorneys and in the next place in payment of all interest warrant then over due (excluding those on Bonds belonging to the sinking fund) in the order in which they shall have become due those of earlier date having priority over those of later date; and lastly in payment of the principal of any of said Bonds then outstanding. The moneys received on any such sale as hereinbefore provided or from the proceeds of land sold should be applied in the following order: In the first place in payment of costs and expenses of such sale and of the execution of the trusts of these presents and the management and operation of said Railroads and the protection and preservation of the trust premises including a reasonable compensation of said Trustee (in addition to the salary herein provided for) and the fees of counsel and attorneys and in the next place in payment of all interest, warrants overdue and of the principal of said Bonds then outstanding without discrimination or preference of interest over principal or of interest warrants of earlier date over those of later date but ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest,

Article 20.

On any sale by virtue of these presents, the receipt of the said Trustees shall be a sufficient discharge to any purchaser for all purchase money paid by him and any conveyance or assignment made by said Trustee shall vest in said purchaser all the title and interest of said Company as fully and effectually as if said Company were party thereto.

Article 21.

Said Company hereby covenants and agrees with the said Trustees on behalf and for the benefit of the holders of the Bonds intended to be secured by these presents that it will from time to time and at all times hereafter upon reasonable request made execute acknowledge and deliver all such further acts, deeds conveyances and assurances in the law for the better assuring unto the said Trustees and their legal successors from time to time of these presents upon the trust and for the purposes herein expressed the said Railroads rolling stock equipment lands and premises herein comprised free from all prior liens and encumbrances except as hereinbefore specified as by the said Trustees or their counsel learned in law shall be reasonably devised advised or required and will from time to time as the said lands granted by the United States are patented to said Company execute proper deeds of further assurance thereof to said Trustees so as to fully indentify the lands intended to be comprised in these presents.

Article 22.

On payment of all of said Bonds and the interest warrants thereto attached and all expenses incurred by the Trustees in the execution of the trusts of these presents. This indenture shall become void and all the estate and interest of the Trustees in the premises conveyed hereby and the lien created thereon by these presents shall absolutely cease and determine.

Article 23.

All rights and powers by these presents given to or covenants stipulations or agreements made with said Klaas Van Oterendorp and Philip N Lilienthal shall survive and enure to the benefit of the Trustees for the time being of these presents in the same manner as if said Trustee or Trustees had been named herein.

Article 24.

In these presents the word "Trustees" shall be held to mean the said Klaas Van Oterendorp and Philip N Lilienthal while continuing to be trustees hereof and the Trustees for the time being of these presents whether both or either be original or new.

Article 25.

No trustee shall be in any manner responsible for any act default, or misconduct of his co Trustee nor for that of any agent, bank banker, broker or other person employed by him or his co trustee, unless he shall be

chargeable with culpable negligence in their selection or in the contrivance of their employment nor otherwise except for his own wilful default misconduct or gross negligence.

Article 26.

The Trustees may pay such reasonable compensation as they shall deem proper to all agents officers attorneys and servants whom they may reasonably employ in the management of their trust, and each Trustee shall be paid by said Company or in default out of the trust moneys the sum of two thousand dollars each for their entire service in the execution of the trusts herein contained and in addition a further reasonable compensation for such additional services as he may be called upon to render in taking possession of and managing the premises or selling the same or bringing suit for the foreclosure of these presents the enforcement of the liens or trusts hereby given or the collection of the moneys secured thereby.

Article 27.

In case of death, resignation or incapacity to act of any Trustee the surviving or continuing Trustee shall appoint another trustee in the place of and instead of the Trustee so dying resigning or becoming incapable and in case there shall be no surviving or continuing Trustee or such surviving or continuing trustee shall fail for three calendar months after the death resignation or incapacity of his previous co, Trustees to appoint a new trustee then

said company or the holder of any Bond secured by these presents may apply to any Judge in the Circuit Court of the United State for the District of Oregon to make such appointment and any such Judge may appoint a new Trustee, by instrument under his hand and seal without suit or other legal proceedings therefor but in no case shall a resident of Oregon be appointed or be capable of acting as a Trustee of these presents.

Article 28.

A Majority in amount of the holders of the outstanding Bonds secured by these presents shall have full power at any time without suit and whether there be any vacancy or not to remove one or both the existing Trustees and to appoint another Trustee or Trustees in his or their place and to increase or diminish the number of Trustees and any such act of the majority in amount of the Bond Holders shall be deemed to be sufficiently made, executed, evidence and proved by a written instrument or instruments purporting to be signed by the Bondholders and stating the identifying numbers and the amount of the Bonds held by each signatory and the respective signatures to which and the production to a notary at the time of signature of the Bonds specified shall be acknowledged before and certified by a Notary Public of any County and his certificate attached authenticated by his Notarial seal.

Article 29.

Any appointment of a New Trustee made by the

surviving or continuing trustee or the majority of the Bond holders or a Judge as hereinbefore provided shall be effectual to vest in the new Trustee all estate, rights, trusts powers and duties as fully as if he were a Trustee party to these presents without any new deed or conveyance but nevertheless said Company hereby covenants in any and every such case to make upon request of the new Trustee all such deeds, conveyances and assurances as may be appropriate for more fully and certainly resting in and confirming to such new Trustee such estate, rights, powers trusts and duties and every resigning Trustee shall on like request make and execute such deeds conveyances and assurances to his successor.

Article 30.

A Majority in amount of the holders of the outstanding Bonds secured by these presents may by written instrument to be executed and proved as provided in Article 28 at any time before the actual sale of any part of the premises waive any default in payment of interest or of the annual payment to the sinking fund yet so far only that the principal of the bonds shall cease to be payable forthwith in case said principal shall have become so payable by reason of such default but such waiver shall be of no effect unless said Company shall together with such instrument or instruments or Waiver hand to the Trustees a sum of money sufficient to pay all interest warrants and sinking fund payments then in arrear and said Trustee shall then proceed to pay said interest warrants and redeem the Bonds so provided for

as nearly as possible in the manner provided by these presents,

Article 31.

Said Company for itself, its successors and assigns doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation, stay appraisement or redemption law or laws, requiring liens or Mortgages to be foreclosed by action or suit and of all other laws now existing or hereafter passed which but for this provision would prevent the absolute and unconditional sale of the premises hereby conveyed by a Court or by the Trustees without suit and on any such sale said Company for itself its successors and assigns covenants to join in and confirm the conveyance to the purchaser.

Article 32.

In case of any sale of said premises whether by the Trustees or a Court any purchaser shall be entitled to deliver in part payment of the purchase money any of the outstanding interest warrants or Bonds secured by these presents and such interest warrants or Bonds shall be reckoned as equivalent to the sum which would be their proportion of the net proceeds of the sale after the deduction of all expenses. The payment to be made in cash to cover such expenses shall be fixed previously by the Trustees or the Court as the case may be and announced in the advertisement of sale.

Article 33.

The trustees shall have power to release from the

lien of these presents any land rolling stock or other appurtenances become useless, for the purpose of the Railroads by *alteration* of route changes in machinery or equipment or otherwise but only on condition that the property so sold be at the same time replaced by other similar property of equal value and subjected to the lien of these presents but until default as aforesaid in payment of interest or the sinking fund payment the Company shall have the right to sell and dispose at its discretion of all said lands owned by the Company and States and of all other lands owned by the Company and not required for the maintenance and operation of its Railroads and to receive and dispose of the proceeds thereof as of the other revenues of the Company and said Trustees shall from time to time as may be required release the lands so sold from the lien of these presents in manner hereinbefore provided.

Article 34.

On any sale whether by the Trustees or a Court of the property hereby conveyed or any part thereof the Trustees shall have the right to buy in the same and a majority in amount of the holders of the outstanding bonds shall have the right by written instrument evidence and proved as hereinbefore provided by article 28 to fix a sum which it shall be the duty of the Trustees to bid for the property to be sold, on behalf and for the benefit of such Bondholders, but only on condition that due provision is made by such majority to the satisfaction of the trustees or the Court as the case may be

for payment in cash of all expenses incurred in the execution of the trusts of these presents and of the proportion of such sum payable to the Bond holders not concurring in such request.

Article 35.

On any such purchase the Trustees shall hold the property so purchased upon trust for the equal benefit of the bondholders who had required the Trustees to buy in the property on their behalf as the absolute property of said Bondholders without any right of redemption or resale in favor of said Company or any Bondholder.

Article 36.

The Trustees shall invest all trust funds which may from time to time come to their hands until required in the purchase of United States Stocks or Bonds at their market value or in the Bonds secured by these presents at any price not exceeding the par value thereof or on loans secured on such stocks of Bonds.

In witness whereof said Company pursuant to a Resolution of its Board of Directors duly authorizing the same has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Secretary and the said Trustees respectively and the said parties of the fourth part, the said committee have hereunto set their hands and seals the fourth day of February 1881.

Signed, sealed and delivered in presence of
P Schulze Oregon and California Railroad
E P Rogers Company.

(Corporate Seal) By R KOEHLER, President
Oregon and California Railroad
Company

By A. G. CUNNINGHAM, Secretary

R KOHLER

HEINRICH HOHENEMSER

By R KOEHLER his attorney.

Trustees as in foregoing instrument mentioned and
parties of the second part.

R KOEHLER

HEINRICH HOHENEMSER

By R KOEHLER his attorney

Trustees as in foregoing instrument mentioned and
parties of the third part.

R KOEHLER

HEINRICH HOHENEMSER

By R KOEHLER his Attorney

PHILLIP B BONN

By R KOEHLER his attorney

PAUL REIGANUM

By R KIEHLER his attorney

HERMANN KOEHLER (Seal.)

By R KOEHLER his attorney

LUDWIG GRUENEBAUM

By R KOEHLER His attorney

CARL POLLITZ

By R KOEHLER His attorney

ADOLPH OTTO

By R. KOEHLER His attorney

MICHAEL BENJAMIN

By R KOEHLER His attorney

A Committee for the protection of the holders of the seven per cent Oregon and California Railroad First Mortgage Bonds authorized to act in behalf of said Bondholders by their association and parties of the fourth part.

K VAN OTERENDORP

P N LILIENTHAL

Trustees as in foregoing instrument mentioned and parties of the fifth part.

State of Oregon)
) ss.
County of Multnomah)

Be it remembered that on the 4th day of February A D 1881 before me the undersigned a Notary Public in and for the said County of Multnomah State of Ore-

gon duly commissioned and qualified came Richard Koehler, Prèsident of the Oregon and California Railroad Company And A G Cunningham Secretary of the Oregon and California Railroad Company whose names are subscribed to the foregoing indenture as the president and Secretary of said Oregon and California Railroad Company both personally known to me to be the individuals named and described in and who executed the said instrument and they severally acknowledged to me that he the said Richard Koehler as President and he the said A G Cunningham as Secretary of the Oregon and California Railroad Company executed the foregoing indenture as and for the act and deed of the said Oregon and California Railroad Company freely and voluntarily and for the uses and purposes therein mentioned. And the said A G Cunningham being by me duly sworn did depose and say that he is the Secretary of the Oregon and California Railroad Company and resides at East Portland Multnomah County, Oregon, that he is the legal custodian of an is acquainted with and has in his possession the corporate seal of the Oregon and California Railroad Company that the seal affixed to the foregoing indenture is such corporate seal; that the same was so affixed by him as secretary of said Company on the 4th day of February 1881, by order of the Board of Directors of said Company and that he signed his name as Secretary thereto by the Like order of the Board of Directors of said Company.

In witness whereof I have hereunto set my hand

and affixed my official seal at the City of Portland Oregon the date first above written.

(Notarial Seal)

PAUL SCHULZE,

Notary Public for Oregon.

State of Oregon)
) ss.
County of Multnomah)

Be it remembered that on this 4th day of February 1881 before me the undersigned a Notary Public in and for said Multnomah County State of Oregon personally appeared the above named Richard Koehler in his own proper person as Trustee mentioned in the foregoing instrument and are of the parties of the second part thereto and also the above named Heinrich Hohenemser as Trustees mentioned in the foregoing instrument and one of the parties of the second part thereto by his attorney in fact the said Richard Koehler to me personally known to be the individuals described in and who executed the foregoing instrument as such Trustees and the said Richard Koehler in his own right as Trustee and and also for and on behalf of the said Heinrich Hohenemser as trustee acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at the city of Portland Oregon the date above written.

(Notarial Seal)

PAUL SCHULZE

Notray Public for Oregon.

State of Oregon)
) ss.
 County of Multnomah)

Be it remembered that on this 4th day of February 1881 before me the undersigned a Notary Public in and for said Multnomah County State of Oregon personally appeared the above named Richard Koehler in his own proper person as Trustee mentioned in the foregoing instrument and one of the parties to the third part thereto and also the above named Heinrich Hohenemser as Trustee mentioned in the foregoing instrument and one of the parties to the third part thereto by his attorney in fact the said Richard Koehler to me personally known to be the individuals described in and who executed the foregoing instrument as such trustees and the said Richard Koehler in his own right as Trustee and also for and on behalf of the said Heinrich Hohenemser as Trustee acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at the City of Portland Oregon the date above written.

(Notarial Seal)

PAUL SCHULZE

Notary Public for Oregon.

State of Oregon)
) ss.
 County of Multnomah)

Be it remembered that on this 4th day of February 1881 before me the undersigned a Notary Public in and

for said County of Multnomah State of Oregon personally appeared the above named Richard Koehler in his own proper person and also the above named Heinrich Hohenemser by his attorney in fact the said Richard Koehler and also the above named Philipp B Bonn by his attorney in fact the said Richard Koehler and also the above named Paul Reinganam by his attorney in fact the said Richard Koehler and also the above named Hermann Koehler by his attorney in fact the said Richard Koehler and also the above named Ludwig Giuenebaum by his attorney in fact the said Richard Koehler and also the above named Carl Pollitz by his attorney in fact the said Richard Koehler and the above named Adolph Otto by his attorney in fact the said Richard Koehler and also the above named Michael Benjamin by his attorney in fact the said Richard Koehler to me personally known to be the individuals described in and who executed the above and foregoing instrument and the said Richard Koehler in his own right and on his own behalf as also for and on behalf of the said Heinrich Hohenemser, Phillip-p B Bonn, Paul Reingamin, Hermann Koehler, Ludwig Gruenebaum Carl Pollitz, Adolph Otto and Micheal Benjamin, acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at the city of Portland Oregon the date above written.

(Notarial Seal)

PAUL SCHULZE,
Notary Public for Oregon.

State of California

)

ss.

City and County of San Francisco)

Be it remembered that on this 12th day of February 1881 before me the undersigned a Commissioner of Deeds for the State of Oregon residing at San Francisco California duly commissioned sworn and fully qualified personally came Klaas Van Oterendorp and Philip N Lilienthal to me personally known to be the individuals described in and who executed the foregoing Indenture and they severally acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal at San Francisco California the date above written.

(Seal of Commissioner of Deeds)

SAMUEL S MURFEY

Commissioner of Deeds for the State of Oregon residing at San Francisco California.

S-schedule

of Rolling Stock of (consolidated) Oregon and California Railroad Company referred to in the foregoing indenture.

20 Locomotives numbered 1 to 20 inclusive

13 Passenger Coaches numbered 1 and from 3 to 14 inclusive.

3 Smoking and baggage cars numbered 1, 2, 3,

77 Flat Cars odd numbered from 1 to 153

12 Stock Cars numbered 500 to 511 inclusive.

Received for record Feby 28th, 1881 at 3:40 o'clock
P M

No. 9567

STATE OF OREGON,)
County of Multnomah,) ss.

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement. The Oregon and California Railroad Co. with Klaas Van Oterendorp et al, has been compared by me with the original, and that it is a correct transcript therefrom and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 5th day of May A. D. 1913.

(SEAL)

JNO. B. COFFEY,
County Clerk.

DEFENDANTS' EXHIBIT 396

is a certified copy of a mortgage of date June 1, 1881, executed by the Oregon and California Railroad Company to Henry Villard, Horace White and Charles Edward Bretherton, recorded in Book 27, page 1, of the Records of Mortgages of Multnomah County, Oregon, and thereafter, about the same time, in the Records of Mortgages of all other counties in which any part of said granted lands was situated, which mortgage is as follows:

Mortgage Book 27 page 1.

O & C R R Co. To Villard et al

THIS INDENTURE, made the first day of June, in the year one thousand eight hundred and eighty one, between the Oregon and California Railroad Company (a corporation organized and existing under the laws of Oregon and hereinafter called the Company) of the first part and Henry Villard, Horace White and Charles Edward Bretherton, all of the City and State of New York, hereinafter called the Trustees) of the second part.

WHEREAS, By an Act of Congress, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from the Central Pacific Railroad in California to Portland in Oregon," and approved July 25th, 1866, it was amongst other things enacted as follows: "Be it enacted by the Senate and House of Representatives of the United States of

America in Congress assembled, That the "California and Oregon Railroad Company" organized under an Act of the State of California, to protect certain parties in and to a railroad survey to "connect Portland, in Oregon, with Marysville in California," approved April 6th, 1863, and such Company organized under the laws of Oregon as the Legislature of said State, shall hereafter designate, be and they are hereby authorized and empowered to lay out, locate, construct, finish and maintain a railroad and telegraph line between the City of Portland, in Oregon, and the Central Pacific Railroad in California in the manner following, to-wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph within the State of California, beginning at some point (to be selected by said Company) on the Central Pacific Railroad in the Sacramento Valley, in the State of California, and running thence northerly through the Sacramento and Shasta Valleys, to the northern boundary of the State of California. And the said Oregon Company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the City of Portland in Oregon, and running thence southerly through the Willamette, Umpqua and Rogue River Valleys to the Southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first named Company. Provided, that the Company completing its respective part of the said railroad and telegraph from either of the termini herein named to the line between California and Oregon before the

other Company shall have likewise arrived at the same line, shall have the right and the said company is hereby authorized to continue in constructing the same beyond the line aforesaid with the consent of the State in which the unfinished part may lie, upon the terms mentioned in this act, until the said parts shall meet and connect, and the whole line of the said railroad and telegraph line shall be completed."

Section 2. And be further enacted that there be and hereby is granted to the said Companies, their successors and assigns for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the line of said railroad, every alternate section of public land, not mineral designated by odd numbers to the amount of twenty alternate sections per mile (ten on each side) of said railroad line, and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers preempted, or otherwise disposed of, other lands, designated as aforesaid shall be selected by said Companies in lieu thereof, under the direction of the secretary of the Interior in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of the said first named alternate sections and as soon as the said Companies or either of them shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof not less than sixty continuous miles from

either terminus, the Secretary of the Interior shall withdraw from said public lands herein granted on each side of said railroad so far as located and within the limits before specified.

The lands herein granted shall be applied to the building of said road within the State respectively wherein they are situated. And the sections and parts of sections of land which shall remain in the United States, within the limits of the aforesaid grant shall not be sold for less than double the minimum price of public lands when sold. Provided, that bona fide and actual settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement and occupation as now provided, by law, purchase, the same at the price fixed for said lands at the date of such settlement, improvement and occupation. And provided also that settlers under the provisions of the Homestead Act, who comply with the terms and requirements of said act, shall be entitled within the limits of said grant, to patents for an amount not exceeding eighty acres of the land so reserved by the United States anything in this Act to the contrary notwithstanding.

“Section 3. And be it further enacted, that the right of way through the public lands be and the same is hereby granted to said companies for the construction of said railroad and telegraph line; and the right, power and authority are hereby given to said companies to take from the public lands, adjacent to the line of said road earth, stone, timber, water and other materials for the construction thereof.” Said right of way is granted to

said railroad to the extent of one hundred feet in width on each side of the said railroad where it may pass over the public lands including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side tracks, turntables, water stations, or any other structures required in the construction and operating of said road.

And Whereas, by another Act of Congress entitled "An Act granting Lands to aid in the construction of a railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon and approved May 4th, 1870. It was amongst other things enacted as follows: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria and from a suitable point of Junction near Forest Grove to the Yamhill River near McMinnville, in the State of Oregon there is hereby granted to the Oregon Central Railroad Company now engaged in constructing the said road, and to their successors and assigns, the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road and also the necessary lands for depots, stations, side tracks and other needful uses in operating the road not exceeding forty acres at any one place; and also each alternate section of the public lands, not mineral excepting coal or iron lands, designated by odd numbers nearest to the

said road to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this act. And in case the quantity of ten full sections per mile cannot be found on each side of said road within the said limits of twenty miles other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty five miles from the track of said road to make up such deficiency.

And Whereas said Oregon and California Railroad Company has succeeded to and become invested with and is now possessed of and entitled to all the grants, right, franchises and privileges conferred upon the Oregon Company referred to in the first hereinbefore recited act of Congress and of the Oregon Central Railroad Company mentioned in the secondly hereinbefore recited Act of Congress and there has been already accepted and approved by the United States as duly constructed under the provisions of the said firstly recited act the part of the railroad of said Oregon and California Railroad Company situated between East Portland and Roseburg, 198 miles in length, and as duly constructed under the provisions of the said secondly recited act, the part of the railroad of said Oregon and California Railroad Company, situate between Portland and St. Joseph 47 miles in length and the company has resolved to and is about to proceed with the completion of the remaining lines of railroad and telegraph author-

ized by and specified in said acts of Congress.

And Whereas, by a deed of Mortgage and trust dated the first day of January, 1881, the company mortgaged its railroads and other property therein described to Klass Van Oterendorp and Philip Lilienthal, to secure an issue of 2500 new first mortgage bonds, for the aggregate amount of two million dollars in American gold coin or eight millions five hundred thousand marks in German money bearing interest at the rate of six per cent per annum payable half yearly on the first day of January and July and redeemable at par at the option of the company all of which bonds have been issued and are now outstanding.

And Whereas the company in pursuance of its articles of incorporation and by laws, and of a plan of reorganization of the company approved and ratified by a special meeting of its stockholders held on the 7th day of May, 1881, has resolved to make an issue of first mortgage bonds as hereinafter described which shall be limited to the rate of twenty thousand dollars for each mile of railroad now or hereafter constructed by the Company as hereinafter specified and actually constructed at the time of issue and of which bonds six million dollars in amount shall be now issued, and to secure the payment of said bonds and the interest thereon in the manner herein provided.

And Whereas, six thousand (6000) in number, six million dollars in amount of said bonds intended to be secured by these presents together with the coupons an-

nexed thereto and the certificate of The Trustees thereon have been prepared and are numbered consecutively from 1 to 6000 both inclusive and bear even date herewith and are in the form following, that is to say.

United States of America, State of Oregon,
Oregon and California Rail Road Company.
of Portland, Oregon.

First mortgage six per cent gold bonds, Amount limited to \$20,000 per mile of Constructed road, Principal redeemable at 110 by a cumulative sinking fund of one per cent per annum, commencing in 1886.

\$1000

No. 0000

\$1000

The Oregon and California Railroad Company, for value received, hereby bonds itself to pay to the bearer, at the office of the company in the City of New York, on the first day of July, A. D. 1921 (unless this bond shall be sooner redeemed as hereinafter mentioned) the sum of one thousand dollars in United States gold coin of the present standard and to pay in the meantime interest thereon in like gold coin at the rate of six per centum per annum half yearly on the first days of January and July in each year free of tax, upon presentation and surrender at such office as they respectively mature, of the eighty coupons annexed.

This bond is one of the first mortgage six per cent gold bonds of the Oregon and California Railroad Company, issued and to be issued only at the rate of \$20,000 for each mile of railroad now or hereafter constructed and being actually constructed at the time of

issue, all being of the same amount, form and tenor, and payable in the same manner and differing only in the identifying numbers, dates and the number of coupons, annexed, and all of which bonds issued and to be issued are equally secured by a first mortgage, dated June 1, 1881, of all the railroads of said Company, constructed and to be constructed, that is to say from Portland to Astoria in accordance with the act of Congress of May 4, 1870, and to Junction and from East Portland to California in accordance with the act of Congress of July 25, 1866, and of all its lands rolling stock and all other property present and future of said company of every description to Henry Villard, Horace White and Charles Edward Bretherton as Trustees, subject, however, to a redeemable prior lien, two million dollars in amount to be discharged as hereinafter mentioned, and which mortgage is recorded in the office of the County Clerk, in Portland, in Oregon and in all other counties in which any part of the railroads and lands of said company are situated; and the said mortgage provides that the proceeds of all bonds sold shall be received by the said trustees and shall be applied by them in discharging the said prior lien for two millions of dollars and the balance of such proceeds, after discharging said lien, shall be applied only for the construction of the road, first, to California and when such road is completed, then to Astoria and Junction; and that, for the purpose of securing such application said Trustees shall pay over the proceeds only under the advice and upon the certificate of a supervising engineer, appointed by them.

The company binds itself to the bearer to constitute a cumulative sinking fund, for redemption, at 110 per cent of the par value thereof, of all said bonds, such sinking fund including the gross proceeds of all lands now or hereafter granted by the United States to said Company, together with such an additional sum to be paid annually by said company to said Trustees on the first day of July in each year, commencing July 1, 1886, as will make up the total annual sinking fund to one per centum from July 1, 1886, upon the aggregate amount of bonds issued, together with, and in addition to the amount of the interest upon the bonds previously redeemed."

The bonds to be redeemed by said sinking fund shall be drawn by lot by said Trustees, at the office of the Company in New York on the first day of April in each year and the numbers of the bonds so drawn advertised in daily newspapers of general circulation published in New York, London and Frankfort o/M. In case this bond shall be so drawn and advertised the amount thereof shall become payable, together with the additional sum of one hundred dollars, in United States gold coin, on the first day of July, then next, at the office of the Company in New York, and it shall bear no interest after such date, unless, upon presentation, payment thereof shall be refused.

Said company further agrees to receive this bond at par in payment for any lands offered for sale by said Company.

Said company further binds itself to pay forthwith upon demand the amount of this bond as aforesaid in case said company shall fail, for six calendar months, to pay any coupon annexed to this bond when the same becomes due or shall fail for six calendar months to pay any sum which may be payable to the said Trustees on account of the sinking fund hereinbefore mentioned, and such default in payment of interest or of the sum payable on account of said sinking fund shall not have been waived by a majority in amount of the holders of said bonds then outstanding in the manner provided in said mortgage. Said company further binds itself to maintain and keep during the continuance of this mortgage financial agencies in London and Frankfor o/M and to cash on presentation at such agencies, all said bonds, and the coupons thereof, as the same become payable, at the fixed rate of exchange of four shillings and two pence sterling per dollar in London and four mark twenty five pfennings in Frankfort o/M. This bond is not valid unless the certificate endorsed hereon shall be executed by said Trustees.

In Witness Whereof, said Company has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Assistant Secretary this first day of June, 1881.

(Seal)

Assistant Secretary

President.

(Form of Last Coupon.)

The Oregon and California Railroad Company will pay the bearer on the first day of July, 1921, thirty dol-

lars in United States gold coin free of tax, at the office of the Company in New York being six months interest on First Mortgage Bond of said Company. No. . . unless said Bond shall have been previously redeemed.

Treasurer.

(Trustees Certificate)

We hereby certify that the within bond is one of the First Mortgage six per cent gold bonds of the Oregon and California Railroad Company, secured by the within mentioned mortgage dated June 1st, 1881, and made by said Company to us as Trustees and that the total amount of said bonds certified by us does not exceed the rate of \$20,000. for each mile of actually constructed railroad.

Trustees.

Now, this Indenture Witnesseth, that in pursuance of said resolutions and to secure the punctual payment of said bonds now to be issued, and all such bonds as shall be hereafter issued on the security of these presents, but not exceeding in all twenty thousand dollars for each mile of road actually constructed at the time of issue and the interest thereon, said Oregon and California Railroad Company doth hereby grant, bargain, sell, assign, transfer and convey unto said Henry Villard, Horace White and Charles Edward Bretherton, their heirs, assigns and legal successors, as trustees of these presents, all and singular the railroad lines of said Oregon and California Railroad Company, now constructed and in operation, between East Portland and Roseburg,

and between Portland and Corvallis and Albany and Lebanon in the State of Oregon, including the railroads heretofore known as the Oregon Central Railroad, the Western Oregon Railroad and the Albany and Lebanon Railroad, in all about three hundred and six and one half ($306\frac{1}{2}$) miles in length running through the Counties of Multnomah, Clackamas, Marion, Linn, Lane, Douglas, Washington, Yamhill, Polk and Benton, in said State of Oregon, together with the ferry boats and landings connecting the said railroads at Portland and East Portland and also all the railroads of said Oregon and California Railroad Company, to be hereafter constructed, that is to say, from Forest Grove to Astoria in accordance with the Act of Congress of May 4th, 1870, hereinbefore recited, and from Corvallis to Junction, and from Roseburg to California to a junction within the Central Pacific Railroad in accordance with the act of Congress of July 25th, 1866, herein before recited and all lands, rights of way, easements and premises now acquired or appropriated, or which may hereafter be acquired or appropriated, for the purpose of the right of way of said railroads or for grounds, sidetracks, depots, warehouses, tanks, round houses, stock yards, or any other railroad purposes, and also all lands granted by the United States in aid of the construction of the said railroads already completed between the termini aforesaid and not yet sold, estimated to be in amount about one million nine hundred thousand acres, and all lands which may be hereafter granted to said Company by the United States and which lands are intended to be

more particularly identified as the same are patented by the United States in manner hereinafter provided and together with all rails, spikes, ties, timber, iron switches, frogs, depots, warehouses, machine shops, bridges, trestle-work, and all other buildings or structures now or hereafter belonging to or used for the maintenance or operation of said railroads respectively including all the offices, docks and warehouses of the Company in Portland and East Portland, or elsewhere and all locomotives, cars and other rolling stock, railroad supplies, fuel, tools and machinery now used or which may hereafter be used in or provided for the maintenance of operation of said railroads and all telegraph lines and other appurtenances of said railroads and the franchise to operate the same, and all the income, earnings, and profits of said railroads, lands, and premises, and all other present and future property of every description of said Oregon and California Railroad Company.

To have and to hold the said railroads, lands, rolling stock, equipment, premises and property unto the use of said Henry Villard, Horace White and Charles Edward Bretherton, their heirs, assigns and legal successors, as trustees of these presents as joint tenants and not as tenants in common free from all prior liens and encumbrances whatever except the prior lien for two millions of dollars created by the said deed of mortgage and trust to Klaas Van Oterendorp and Philip Lilienthal hereinbefore referred to, and which lien is to be discharged as hereinafter mentioned in trust nevertheless for the equal benefit and security, pro rata of every

holder of any of said bonds to be now issued or which may be hereafter issued as aforesaid and intended to be secured hereby without any priority of any one bond over another by reason of earlier issue or negotiation and for the uses and purposes and with the rights and powers, and subject to the provisions agreements, covenants and stipulations contained in the following articles that is to say:

Article I. The said Oregon and California Railroad Company hereby covenants with said Trustees that it will proceed with all reasonable dispatch to complete its said railroad to California, so that cars can run through from Portland to San Francisco, and will keep all the railroads from time to time constructed and rolling stock and other property of said company in good order and repair, and will reconstruct, replace and restore all such, or so much, and such parts thereof as may be worn out, wrecked, destroyed or displaced, and will pay all taxes assessed against said railroads, lands and premises, and will pay the principal, moneys, secured by all bonds to be issued on the security of these presents, and all interest due thereon at the times and places, and in the manner in said bonds and the coupons annexed thereto respectively specified and perform all the conditions and stipulations in said bonds expressed and contained.

Article 2. And further, that if any coupon on any one of said bonds shall not be paid on presentation as therein provided and shall remain unpaid for six calen-

dar months and such default shall not be waived in manner hereinafter specified, then the said company will forthwith pay on demand at the place and in the manner in said bond specified the principal of all such bonds.

Article 3. And further, that said Oregon and California Railroad Company will create and maintain a cumulative sinking fund for the redemption of all said bonds at the rate of 110 per cent of the par value thereof, and will for such purpose on the first day of July, 1886, and on every first day of July thereafter, pay at the office of the company in New York to said Trustees, such a sum as will in addition to the gross proceeds of all lands now or hereafter granted by the United States to said company, make up a total amount of one per cent per annum in gold coin computed from the first day of July, 1886, upon the aggregate amount of bonds issued.

Article 4. And further that in case default shall be made in any annual payment to be made for such sinking fund specified in the last article or any part thereof for six calendar months, and such default shall not be waived as hereinafter provided, then said company will forthwith pay on demand at the place and in the manner in the said bonds specified, the principal of each and all of said bonds then remaining due at the rate of 110 per cent of the par value thereof.

Article 5. Until default in any payment required by the previous articles, said company shall freely possess the said railroads, lands and premises, and the income,

earnings and profits thereof, and may contract to sell and dispose of the lands granted by the United States and of all other lands owned by the company not required for the maintenance and operation of its railroads, but no such sale nor any conveyance or release of said lands or any of them, shall be valid and effectual unless such sale be at a price approved by said Trustees and received by them, and such conveyance or release shall be executed by said Trustees as one of them or by their attorney or attorneys in fact, thereunto lawfully authorized.

And for the purpose of facilitating such sales, said Trustees may from time to time either concur with said company in appointing an agent to make such sales, and executed such releases and conveyances as their attorney in fact or may appoint an agent of their own to supervise and join in such sales, and to execute such releases and conveyances as their attorney in fact and they may delegate to any such agent all their powers and duties in respect to the sale of lands except the custody of the proceeds thereof.

Article 6. Said Trustees shall hold the said proceeds of all lands sold and the payments to be made to them by said company as above mentioned, as well as all interest received upon bonds redeemed as a cumulative sinking fund to discharge and extinguish the whole of said bonds by annual redemption at the rate of 110 per cent of the par value thereof in the following manner; on the 1st day of April, 1886, and on the 1st day of

April, in every succeeding year, or as soon thereafter as may be said trustees shall cause to be drawn at the office of the company in New York in the presence of a Notary Public out of the whole number of bonds then outstanding such a number of bonds as said sinking fund will, on the 1st day of July then next ensuing, suffice to redeem as hereinbefore mentioned.

Article 7. Said Trustees shall publish by notice conspicuously posted up on or before the 30th day of April next ensuing after each such drawing, in the office of the company, in New York and at the financial agencies of the Company in London and Frankfort o/M and so remaining until the 1st day of July then next ensuing and by advertisement in daily newspapers of general circulation, published respectively in New York, London and Frankfort, the numbers of the bonds so drawn for redemption and shall pay and redeem such bonds so drawn for redemption and shall pay and redeem such bonds at the rate of 110 per cent of the par value thereof, at the office of the company, in New York on said first day of July, or so soon thereafter as the said company shall pay over the sums hereby stipulated to be paid for the purpose.

Article 8. When any bonds shall have been drawn as aforesaid and notice given of the numbers of the bonds so drawn for redemption then each bond so drawn shall become payable on the first day of July then next ensuing, together with the additional sum of one hundred dollars in gold coin of the United States, making in all

110 per cent of the par value thereof, payable at the office of the company in New York, and shall bear no interest after that day, unless, on presentation thereof at the office of the Company in New York, payment of said bond at the rate aforesaid or any interest due thereon shall be refused.

Article 9. The bonds redeemed out of the sinking fund by said Trustees shall be cancelled by them but the coupons shall remain in full force and shall be regularly presented by The Trustees and the amount thereof collected for the benefit of the sinking fund.

Article 10. All bonds which from any cause remain unredeemed on the first day of July, 1921, shall be then paid off at the rate of 110 per cent of the par value thereof.

Article 11. When all of said bonds shall be redeemed by said sinking fund or acquired and cancelled by said company and handed to said Trustees, so cancelled, they shall enter satisfaction of record of these presents.

Article 12. In case the said company shall fail to keep the said railroads, rolling stock equipment and premises herein comprised, or at any time hereafter subject to the lien of these presents in good order and repair, or in case default shall be made in the payment of any coupon on any of said bonds or of the said sums to be paid for the sinking fund as aforesaid or any part thereof, and such default shall continue for six calendar months, or in payment of any taxes assessed against said railroads lands and premises, it shall be lawful for said

Trustees to take possession personally or by their agent or agents, of said railroads, rolling stock and equipment, and the lands and other premises hereby conveyed, or which may be then subject to the lien of these presents and to operate the said railroads and manage the same and collect and receive the income, earnings and tolls thereof, and the proceeds of lands contracted to be sold, and said company covenants and agrees that it will, on demand surrender such possession and permit said Trustees to use and possess said railroads, rolling stock, lands and premises without interruption or disturbance and will permit and suffer said Trustees to collect and get in all freight, moneys, ticket balances or other earnings and the purchase moneys of all lands sold, either then due or thereafter becoming due, and in case it may be necessary or may be deemed advisable by said Trustees, to take legal proceedings for foreclosure of this mortgage or to obtain possession of said premises in pursuance of the provisions of this article, they shall be entitled to the appointment of a Receiver or Receivers to be nominated by them or to be themselves nominated and appointed Receivers, as they may think most expedient.

Articles 13. Said Trustees, when in possession of said railroads lands and premises shall have the right as irrevocable attorney or attorneys of said company, to bring or defend, in the name of the said company, any actions for the collection of income, freight, moneys, ticket balances or other earnings, or unpaid purchase money for lands sold, or for obtaining or defending the

possession of any property subject to the lien or trusts of these presents or for the condemnation of lands required for the maintenance or operation of said railroads, or in any manner affecting the maintenance thereof.

Section 14. Said Trustees are hereby authorized in their discretion to accept possession of said railroads, with the rolling stock, lands, and appurtenances herein comprised, although no such default as aforesaid shall have been made if said company shall offer to give up possession to them and thereupon to manage and operate the same and collect the income and earnings thereof, as hereinbefore provided.

Article 15. It shall be the duty of said Trustees to take possession of said railroads, lands and premises after any such default as aforesaid, upon written requisition made to them for such purpose by the holders of not less than one quarter in amount of said bonds then outstanding.

Article 16. Said Trustees shall have full power from time to time for the purpose of enforcing and administering the trusts and powers of these presents and for operating and managing or keeping in good order and repair the said railroads, rolling stock, lands and premises, to hire and employ such managers, officers, clerks, agents, attorneys and assistants, as they shall deem necessary or useful and to defray all expenses of such employment, and otherwise executing the trusts of these

presents, and to pay any taxes assessed upon the trust premises or any part thereof, or any other prior charges thereon out of any moneys coming to their hands, and in case said Trustees shall have no funds in their hands and shall make any payments either for such purposes, or in any other manner for the protection or preservation of the trust premises (whether said Trustees shall be in possession of the same or not) the amount so paid together with interest thereon at the rate of ten (10) per centum per annum, shall be a first charge on the trust premises and the earnings, income and proceeds thereof, and in case said company shall fail, on demand to repay said Trustees any amount paid by them as aforesaid with interest at the rate aforesaid, they may enter upon and take possession of said railroads, lands and premises in the same manner as if said Company had made default in payment of interest on the bonds hereby secured, and retain possession and receive the income earnings and proceeds thereof until they shall have recouped themselves the amount so paid with interest as aforesaid.

Article 17. After any such default as aforesaid, in payment of interest or sinking fund payments or any part thereof, and such default shall have continued for one year and shall not have been waived as hereinafter provided, or in case the principal of any of said bonds shall not be paid on the 1st day of July, 1921, together with the additional sum hereinbefore specified, it shall be the duty of said trustees to forthwith proceed to enforce this security and to sell said railroads, rolling stock, equipment and appurtenances and the lands and pre-

mises comprised herein, or then subject to the lien of these presents in one lot or in more than one lot or parcel, and at one time or at different times, and for cash or on reasonable credit payment therefor being secured on the property sold and otherwise, upon such terms and in such manner as said Trustees may in their discretion think best.

Article 18. Such sale or sales may be made either without suit by said Trustees, or their duly authorized agent, by public auction, at the door of the Court House of Multnomah County in Oregon, after notice of such sale shall have been published at least once a week for four consecutive weeks in the New York Herald (or in case said paper shall not be then published, then in some other daily paper of general circulation published in New York and selected by said Trustees); and in case said sale shall be adjourned, the like four weeks' notice shall be given of the adjourned sale; or, at the option of said Trustees such sale may be made judicially by action or suit, brought by said Trustees for the foreclosure of this mortgage or enforcement of the liens hereby created, or administration of the trusts of these presents, as said Trustees may deem most expedient.

Article 19. The moneys received from the net earnings of said railroads or purchase money on any such sale thereof as hereinbefore provided or from lands sold, when in possession of said Trustees shall be applied in the following order: In the first place in the payment of the cost and expenses of the execution of the trusts

of these presents and the management and operation of said railroads, and the protection and preservation of the trust premises, including a reasonable compensation to said Trustees (in addition to the ordinary compensation salary herein provided for) and the fees of counsel and attorneys; and in the next place, in payment of all coupons then over due (excluding those on bonds belonging to the sinking fund) in the order in which they shall have become due those of earlier date having priority over those of later date; and lastly in payment of the principal of any of said bonds then outstanding, together with the same additional sum as would have become payable, if they have been drawn for redemption as hereinbefore provided.

Article 20. On any sale by virtue of these presents the receipt of the said Trustees shall be a sufficient discharge to any purchaser for all purchase money paid by him and any conveyance or assignment made by said Trustees shall vest in said purchaser all the title and interest of said company as fully and effectually as if the company were party thereto.

Article 21. The company hereby covenants and agrees with the said Trustees, on behalf and for the benefit of the holders of the bonds intended to be secured by these presents, that it will from time to time, and at all times hereafter, upon reasonable request made, execute, acknowledge and deliver, all such further acts, deeds, conveyances and assurances in the law for the better assuring unto the said Trustees and their legal successors

from time to time as Trustees of these presents upon the trusts, and for the purposes herein expressed the said railroads, rolling stock equipment, lands and premises herein comprised free from all prior liens and encumbrances and all other present and future property of said company of every kind and description as by the said Trustees or their Counsel learned in the law shall be reasonably devised, advised or required and will from time to time as the said lands granted by the United States are patented to said Company execute proper deeds of further assurance thereof to said Trustees, so as to fully identify the lands intended to be comprised in or subject to the lien of these presents.

Article 22. On payment and cancellation of all of said bonds and the coupons thereto attached and payment of all expenses incurred by the Trustees in the execution of the trusts of these presents this indenture shall become void, and all the estate and interest of the trustees in the premises conveyed hereby and the lien created thereon by these presents shall absolutely cease and determine.

Article 23. All rights or powers by these presents given to or covenants, stipulations or agreements made with said Henry Villard, Horace White and Charles Edward Bretherton, shall survive and enure to the benefit of the Trustee or Trustees for the time being of these presents, in the same manner as if said Trustee or Trustees had been named herein.

Article 24. In these presents, the word "Trustees"

shall be held to mean the said Henry Villard, Horace White and Charles Edward Bretherton while continuing to be Trustees hereof and the Trustees for the time being of these presents whether all or any be original Trustees or new Trustees.

Article 25. No trustee shall be in any manner responsible for any act, default or misconduct of his co Trustee nor for that of any agent, bank, banker, broker, or other persons employed by him or by his co Trustee, unless he shall be chargeable with culpable negligence in their selection, or in the continuance of their employment, nor otherwise, except for his own willful default, misconduct or gross negligence. But except as herein specially authorized no Trustee shall have power to delegate his powers or authority to his co Trustees or co Trustee or any other person whatever.

Article 26. The Trustees may pay such reasonable compensation as they shall deem proper to all agents, land agents, engineers, officers, attorneys and servants whom they may reasonably employ in the management of their trust and said Trustees shall be paid by said company, or in default, out of the trust moneys the sum of fifty cents each for each bond certified by them and one eighth per cent on all moneys passing through their hands and disbursed by them for their entire service in the execution of the trusts herein contained until default and in addition in case of default a further reasonable compensation for such additional services as they may be called upon to render in taking possession of and man-

aging the premises or selling the same, or bringing suit for the foreclosure of these presents the enforcement of the liens or trusts hereby credited or the collection of the moneys secured or to be secured by these presents.

Article 27. In case of the death resignation or refusal or incapacity to act of any Trustee the surviving or continuing Trustees or Trustee shall by deed appoint a suitable person as trustee in the place of stead of the trustee so dying, resigning, refusing or becoming incapable, and in case there shall be no surviving or continuing Trustees or Trustee, or such surviving or continuing Trustees or Trustee, shall fail for three calendar months after the death, resignation, refusal or incapacity of their or his previous co trustee to appoint a new trustee then said company or the holder of and bond secured by these presents may apply to any judge in the Circuit Court of the United States for the district of Oregon to make such appointment and any such judge may appoint a new Trustee by instrument under his hand and seal, without suit or legal proceedings therefor; but in no case shall a citizen of the State of Oregon be appointed or be capable of acting as a Trustee of these presents. And it is hereby declared to be the duty of said Trustees to bring all actions or suits in any way relating to the trusts of these presents in the courts of the United States whenever such Courts shall have jurisdiction of such action or suit, and not in the courts of the State.

Article 28. A majority in amount of the holders of the outstanding bonds, at any time secured by these

presents shall have full power at any time, without suit and whether there be any vacancy or not to remove all or any of the then existing Trustees, and to appoint other Trustees or another Trustee in their or his place and to increase or diminish the number of Trustees or to appoint a corporation duly authorized to execute trusts in the State of Oregon, as one of the trustees or as sole Trustee, and any such act of the majority in amount of the bondholders shall be deemed to be sufficiently made, executed, evidenced and proved by a written instrument or instruments purporting to be signed by the bondholders and stating the identifying numbers and the amount of the bonds held by each signatory and the respective signatures to which, and the production to a notary at the time of signature of the bonds specified shall be acknowledged before and certified by a notary public, and his certificate attached, and authenticated by his notarial seal. No proof shall be necessary of the qualifications of any such notary, so purporting to act in the United States, the British Dominions, Holland, France or the German Empire.

Article 29. Any appointment of a new Trustee, made by the surviving or continuing trustees or trustee or the majority of the bondholders or a judge as hereinbefore provided shall be effectual to vest in the new Trustees or new Trustee all estates, rights, trusts, powers and duties as fully as if they or he were Trustees or a Trustee party to these presents, without any new deed or conveyance but nevertheless the company hereby covenants in any and every such case, to make upon request

of the new Trustees or Trustee, all such deeds, conveyance and assurances as may be appropriate for more fully and certainly vesting in and confirming to such new Trustees or Trustee such estates, rights, powers, trusts and duties, and every resigning Trustee shall, on like request, make and execute such deeds conveyances and assurance to his successors or successor.

Article 30. A majority in amount of the holders of the outstanding bonds at any time secured by these presents may by written instrument to be executed as provided in Article 28, at any time before the actual sale of the premises waive any default in payment of interest, or of the annual payment to the sinking fund, yet so far only that the principal of the bonds shall cease to be payable forthwith, in case said principal shall have become so payable by reason of such default but such waiver shall be of no effect unless the company shall together with such instrument or instrument of waiver, hand to the trustees a sum of money sufficient to pay all coupons and sinking fund payments then in arrear, and said Trustees shall then proceed to pay said coupons and redeem the bonds so provided for as nearly as possible in the manner provided by these presents. And such a majority may, in like manner at any time, direct and authorize the funding of any coupons secured by these presents whether overdue or not into bonds secured by these presents provided, however, that the aggregate amount of all bonds secured by these presents shall never exceed the rate of twenty thousand dollars for each mile of constructed road as hereinbefore pro-

vided. Any such funding of coupons into bonds shall be binding upon the minority of said bondholders, and shall be carried out by said Trustees who shall have power to do all things necessary or proper for the purpose.

Article 31. The company for itself, its successors and assigns, doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation stay appraisment or redemption laws, or laws requiring liens or mortgages to be foreclosed by action or suit and of all other laws now existing, or hereafter passed, which, but for this provision, would prevent the absolute and unconditional sale of the premises hereby conveyed by a court or by a Trustee without suit; and on any such sale said company for itself, its successors and assigns covenants to join in and confirm the conveyance to the purchaser.

Article 32. In case of any sale of said premises whether by the trustee or by a court, any purchaser shall be entitled to deliver in part payment of the purchase money, any of the outstanding coupons or bonds, secured by these presents and such coupons or bonds shall be reckoned as equivalent to the sum which would be their proportion of the net proceeds of the sale after the deduction of all expenses, all such bonds being reckoned at 110 per cent of their par value. The payment to be made in cash to cover such expenses, shall be fixed previously by the Trustees or the Court as the case may be, and announced in the advertisement of sale.

Article 33. The Trustees shall have power to release from the lien of these presents any land, rolling stock or other property, become useless for the purposes of the railroads by alteration of route, changes in machinery or equipment or otherwise, but only on condition that the property so sold be forthwith replaced by other property of equal value and subjected to the lien of these presents.

Article 34. On any sale, whether by the Trustees or a Court of the property hereby conveyed or any part thereof the Trustees shall have the right to buy in the same and a majority in amount of the holders of the outstanding bonds shall have the right, by written instrument, evidenced and proved as hereinbefore provided by article 28 to fix a sum which it shall be the duty of the trustees to bid for the property to be sold on behalf and for the benefit of such bondholders, but only on condition that due provision is made by such majority to the satisfaction of the Trustees or the court, as the case may be, for the payment in cash of all expenses incurred in the execution of the trusts of these presents and of the proportion of such sum payable to the bondholders not concurring in such request.

Article 35. On any such purchase the Trustees shall hold the property so purchased upon trust for the equal benefit of the bondholders who had required the Trustees to buy in the property on their behalf as the absolute property of said bond holders without any right of redemption or resale, in favor of said Company or any

bondholders.

Article 36. The Trustees shall deposit all trust funds which may from time to time come to their hands in their joint names, in the London and San Francisco Bank, Limited, or such other respectable bank or banks, trust company or companies in London, New York, Frankfort, San Francisco or Portland, as they may from time to time agree upon and may from time to time invest the same until required in the purchase of United States stocks or bonds, at their market value, or in the Bonds secured by these presents at any price not exceeding the par value thereof or on loans secured on such stocks or bonds.

Article 37. The six thousand bonds intended to be now issued and secured by these presents and all other bonds which may at any time hereafter be created and intended to be secured by these presents shall, after the execution thereof by the company be delivered to said Trustees to be certified by them as herein provided and shall not be delivered back when certified to said company, but shall be retained and held by said Trustees, who shall only deliver them to the Company or to the purchasers of such bonds upon the payment to said Trustees of the price thereof.

Article 38. The bonds to be issued on the security of these presents (except the first issue of 6,000 bonds) shall only be sold or disposed of upon the terms and at a price approved of by said Trustees.

Article 39. The proceeds of the bonds sold or dis-

posed of shall be applied by said Trustees first in paying off and discharging the prior lien of two millions of dollars hereinbefore referred to, and the residue shall be held by them as a construction fund and shall be exclusively disbursed for the completion of the railroads of said Company, first to California in accordance with said Act of Congress of July 25, 1866, or with any amendments thereof which may be hereafter made by Congress and accepted by said Company and when the railroad to California is completed so that cars can run through from Portland to San Francisco then to Astoria and Junction, in accordance with said act of Congress of May 4th, 1870.

Article 40. For the purpose of securing the due application of the proceeds of bonds to the construction of said railroads as aforesaid the trustees shall disburse such proceeds only under the advice and upon the certificate of a competent engineer from time to time agreed upon and nominated in writing by them for the purpose, and all purchasers of rails, rolling stock, ties or other materials shall be made on account of said construction fund and in the name of said Trustees, so that such materials shall upon the purchase thereof become and continue subject to the lien of these presents.

Article 41. The payment of coupons upon bonds now or hereafter to be issued on the security of these presents not exceeding four coupons upon any one bond after its issue shall be considered as part of the expense of and chargeable to the construction of the railroad to

California until through connection is made with the system of the California Railroads so that cars can run between Portland and San Francisco and of the railroad to Astoria until the railroad is opened from Portland to tidewater at Astoria; and the construction of a railroad bridge across the Willamette at Portland so as to connect the railroads of said Company on each side of that river and any necessary or proper increases of depot and dock accommodation in or near Portland shall be considered part of the expenses of the railroad to California.

Article 42. At any time after but not before the 1st day of January, 1883, whenever said company shall have constructed any additional railroad beyond the 306 $\frac{1}{2}$ miles hereinbefore described said company may prepare and execute such a number of additional bonds to be secured by these presents as shall not exceed in the whole, including the bonds for six millions of dollars to be now issued the rate of \$20,000 for each mile of constructed road, and shall deliver such bonds to said Trustees, who shall cause the constructed road to be carefully examined and measured by their supervising engineer, and if they shall receive from such engineer a certificate that the additional road is duly constructed and completed to the length of miles claimed, with all proper depots and equipment in proportion to the rest of the constructed road, they shall certify said bonds and hold the same as hereinbefore provided until sold by said company, and then deliver the same to the purchasers thereof upon receipt of the purchase money provided however that said Trus-

tees shall not be required to examine and certify bonds for less than ten miles of railroad at any time.

Article 43. All bonds to be hereafter issued as aforesaid shall be in the same form and payable in the same manner as the bonds to be now issued except that they shall bear the date when actually certified by said Trustees, and shall have all coupons of earlier date cut off, so as to bear interest only from the date when certified, and they shall all be consecutively numbered from 6,001 onwards and all such bonds when certified by said Trustees shall be in all respects equally secured by these presents with the 6000 bonds to be now issued.

Article 44. And whereas by reason of distance, lapse of time or other accident the dates of the actual execution of this indenture of mortgage and trust by the various parties thereto may be previous or subsequent to the day of which it bears date, now it is hereby expressly agreed and declared that this indenture of mortgage and trust shall be dated the first day of June, 1881, and shall be valid and effectual as if executed on the day of the date thereof, and that this indenture of mortgage and trust is the indenture of mortgage referred to in the bonds hereinbefore mentioned the form whereof is hereinbefore set forth and is made and executed by and between the parties hereto as and for the indenture of mortgage and trust securing and intended to secure said bonds as in said bonds is mentioned and recited.

IN WITNESS WHEREOF, The Oregon and California Railroad Company, pursuant to a resolution

of its board of directors duly authorizing the same, has caused these presents and nineteen duplicates thereof to be sealed with its corporate seal, signed by its president and attested by its assistant secretary; and the said Trustees respectively have hereunto and unto the said nineteen duplicates thereof set their hands and seals the day and year above written.

Oregon and California Railroad Company,

By H. VILLARD, President.

(O. & C. R. R.)

Attest: H. H. Tyndale,

(Corporate seal)

Assistant Secretary.

(Seal)

H. VILLARD,)

(Seal)

HORACE WHITE,) Trustee

(Seal)

C. E. BRETHERTON,)

Signed, sealed and delivered

in precence of:

Geo. A. Saxer,

C. A. Spofford,

20 Nassau St.

New York.

State of New York,)

) ss.

City and County of New York.)

Be it remembered that on this 27th day of July, A. D. 1881, before me, Charles Edgar Mills, a Commissioner of the State of Oregon in and for the State of New York, residing in said City of New York per-

sonally appeared Henry Villard, the President of the Oregon and California Railroad Company and Hector H. Tyndale, the Assistant Secretary of the same company to me respectively personally known to be such, who being by me severally duly sworn, did depose and say that he said Henry Villard resides in the City and State of New York; that he said Hector H. Tyndale also resides in said City of New York; that he, said Henry Villard is the president and he said Hector H. Tyndale is the Assistant Secreary of said Company; that they know the corporate seal of said company, that the seal affixed to the foregoing instrument is such corporate seal, that it was so affixed thereto by order of the board of directors of said company, and they the said Henry Villard and Hector H. Tyndale signed their names thereto by the like order as President and Assistant Secretary of said company respectively to be their free and voluntary act and deed and as the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal this 27th day of July, A. D. 1881.

Charles Edgar Mills,

A Commissioner of Oregon in New York.

(Commissioners Seal)

State of New York,)
) ss.
City and County of)
New York.)

Be it remembered, that on this 27th day of July, A. D. 1881, before me, Charles Edgar Mills, a commissioner of the State of Oregon, in and for the state of New York, residing in said City of New York, personally appeared Henry Villard, Horace White and Charles Edward Bretherton, Trustees in the foregoing deed of trust, to me personally known to be the identical persons described in and who executed the foregoing instrument as Trustees and they severally acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

Witness my hand and official seal this 27th day of
July A. D. 1881.

Charles Edgar Mills,

A Commissioner for Oregon in New York.

(Commissioners seal)

Recd. for Record Aug. 18, 1881,

oOo

Form M 44

STATE OF OREGON,)
County of Multnomah,) ss.

No. 9556

I, JOHN B. COFFEY, County Clerk and Clerk
of the County Court of the County of Multnomah and

State of Oregon, do hereby certify that the foregoing copy of agreement, O. & C. R. R. Co. to Villard et al recorded in Book 27 page 1 Record of Mortgages, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

In TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 3rd day of May A. D. 1913.

(Seal)

Jno. B. Coffey, County Clerk

DEFENDANT'S EXHIBIT 397

is a certified copy of mortgage executed June 2, 1881, by the Oregon and California Railroad Company to Henry Villard, Robert Davie Peebles, and Charles Edward Bretherton, recorded page 179, Book 27, of Records of Mortgages, Multnomah county, Oregon, and thereafter, and about the same time, recorded in the Records of Mortgages of all other counties in which any part of said granted lands are situated, which said exhibit, is as follows:

THIS INDENTURE, made the second day of June, in the year One Thousand Eight Hundred and Eighty-one, Between the Oregon and California Railroad Company (a corporation organized and existing under the laws of Oregon and hereinafter called the Company), of the first part and Henry Villard of the

City and State of New York. Robert Davie Peebles, of London, in England, and Charles Edward Brether-ton, of the City and State of New York, (hereinafter called the Trustees) of the second part.

WHEREAS, by an act of Congress "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from the Central Pacific Railroad in California, to Portland in Oregon," and approved July 25th, 1866, it was amongst other things, enacted as follows: Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the California and Oregon Railroad Company, "organized, under an act of the State of California to protect certain parties in and to a railroad survey" to connect Portland, in Oregon, with Marysville in California," approved April 6th, 1863, and such Company, organized under the laws of Oregon as the Legislature of said State shall hereafter designate, be and they are hereby authorized, empowered to lay out, locate, construct, finish and maintain a railroad and telegraph line between the City of Portland in Oregon and the Central Pacific Railroad in California, in the manner following to-wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph within the State of California, beginning at some point (to be selected by said Company) on the Central Pacific Railroad in the Sacramento Valley, in the State of California; and running thence northerly, through the Sacramento and Shasta Valleys, to the

northern boundary of the State of California; and the said Oregon Company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the City of Portland in Oregon, and running thence southerly through the Willamette, Umpqua and Rogue River Valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first named Company, Provided that the Company completing its respective part of the said railroad and telegraph from either of the termini herein named to the line between California and Oregon before the other Company shall likewise have arrived at the same line shall have the right, and the said Company is hereby authorized to continue in constructing the same beyond the line aforesaid, with the consent of the State in which the unfinished part may lie, upon the terms mentioned in this Act, until the said parts shall meet, and connect and the whole line of the said railroad and telegraph shall be completed.

“Section 2. And be it further enacted, that there be and hereby is granted to the said Companies, their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of mails, troops, munitions of War, and public stores over the line of said railroad, every alternate section of public land not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been

granted, sold, reserved, occupied, by homestead, settlers, pre-empted or otherwise disposed of, other lands designated as aforesaid, shall be selected by said Companies in lieu thereof, under the direction of the secretary of the Interior in alternate sections, designated by odd numbers as aforesaid nearest to, and not more than ten miles beyond the limits of the said first named alternate sections; and as soon as the said Companies, or either of them shall file in the office of the Secretary of the Interior, a map of the survey of said railroad or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified." The lands herein granted shall be applied to the building of said road within the States respectively wherein they are situated, and the Sections and parts of sections of land which shall remain in the United States within the limits of the aforesaid grant, shall not be sold for less than double the minimum price of Public lands when sold. Provided, That bona fide and actual settlers under the preemption laws of the United States May, after due proof of settlement, improvement and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement and occupation. And provided also, that settlers under the provisions of the Homestead Act, who comply with the terms and requirements of said act, shall be entitled within the limits of said grant, to patents for an amount not ex-

ceeding eighty acres of the land so reserved by the United States, anything in this act to the contrary notwithstanding.”

Section 3. And be it fruther enacted, That the right of way through the public lands be and the same is hereby granted to said Companies for the construction of said railroad and telegraph line; and the right power and authority are hereby given to said Companies to take from the public lands adjacent to the line of said road, earth, stone, timber, water and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of the said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side tracks, turntables, water stations, or any other structures required in the construction and operation of said road.”

AND WHEREAS, by an other Act of Congress, entitled “An Act granting lands to aid in the Construction of a railroad and Telegraph line from Portland to Astoria and McMinnville, in the State of Oregon,” and approved May 4, 1870, it was amongst other things enacted as follows: “Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria and from a suitable point of Junction near Forest Grove to the Yamhill River

near McMinnville, in the State of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged in constructing the said road, and to their successors and assigns, the right of way through the public land of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands, materials for constructing said road, and also the necessary lands for depots, stations, side tracks and other needful uses in operating the road, not exceeding forty acres at any one place; and also, each alternate section of the public lands not mineral excepting coal or iron lands designated by odd numbers, nearest to the said road, to the amount of ten such alternate sections per mile on each side thereof, not otherwise disposed of or reserved or held by valid preemption or homestead right at the time of the passage of this act, and in case the quantity of ten full sections per mile cannot be found on each side of said road within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency."

AND WHEREAS, Said Oregon and California Railroad Company has succeeded to and become invested with and is now possessed of and entitled to all the grants, rights, franchises and privileges conferred upon the Oregon Company referred to in the first hereinbefore entitled Act of Congress and of the Oregon Central Railroad Company mentioned in the secondly hereinbefore

recited Act of Congress, and there has been already accepted and approved by the United States, as duly constructed under the provisions of the said firstly recited act the part of the railroad of said Oregon and California Railroad Company, situated between East Portland and Roseburg, 198 miles in length, and as duly constructed under the provisions of the said secondly recited act, the part of the railroad of said Oregon and California Railroad Company, situate between Portland and St. Joseph, 47 miles in length, and the Company has resolved to and is about to proceed with the completion of the remaining lines of railroad and telegraph authorized by and specified in said acts of Congress.

AND WHEREAS, Said Oregon and California Railroad Company, by an indenture dated the fifteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy, mortgaged to Faxon D. Atherton and Milton S. Latham, all its railroad from Portland to the boundary line of the State of Oregon and California then constructed and thereafter to be constructed, with its equipments and appurtenances, and all its property except it-s Congressional land grant, upon the terms and conditions therein mentioned, to secure and issue of eighteen thousand four hundred and fifty mortgage bonds of the said Company, amounting to the sum of ten millions nine hundred and fifty thousand dollars, and interest thereon as evidenced by interest warrants or coupons thereto annexed, all which bonds were duly negotiated and issued."

AND WHEREAS, by another indenture also

dated the fifteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy, said Company granted and conveyed to the said Milton S. Latham, Faxon D. Atherton and William Norris, all the lands granted and to be granted by the United States to aid in the construction of said railroad upon trusts as therein provided for the sale of such lands, and for the creation with the proceeds of such sale of a sinking fund for the payment at maturity of said issue of ten millions nine hundred and fifty thousand dollars, in amount of the first mortgage bonds of said Company.

AND WHEREAS, Said Company having made default of the interest upon said bonds, the holders thereof formed and organized themselves into an association called the Association of Holders of the Oregon and California Railroad Seven Per Cent First Mortgage Bonds" having its office and legal domicile at Frankfort on the Main, in Germany, and such association became the holder of all said bonds.

AND WHEREAS, By a plan of reorganization of said Oregon and California Railroad Company, adopted by an extraordinary general meeting of said Association on the 5th day of May, 1881, and adopted and ratified by a special meeting of the stock holders of said Company on the 7th day of May, 1881, it was resolved and agreed that the holders of said bonds should receive payment thereof in a new issue of preferred stock of said Company of the amount and of the character and

and that the performance of the conditions upon which said preferred stock should be subscribed and issued should be secured by a deed of trust or security to said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, in the manner provided and effected by these presents.

AND WHEREAS, in pursuance of further provisions of said plan of reorganization by a deed of Mortgage and trust dated the first day of June, 1881, the Company mortgaged its railroads, lands, and all other property, present and future, to Henry Villard, Horace White and Charles Edward Bretherton, to secure an immediate issue of 6,000 first mortgage bonds, for the aggregate of six million dollars in gold coin, bearing interest at the rate of six per cent per annum, payable half-yearly, on the first days of January and July, and redeemable at 110 per cent of the par value thereof, in manner in said bonds and mortgage specified, all of which 6000 bonds have been issued and are now outstanding, and also to secure such further issues of first mortgage bonds not exceeding in the whole the rate of \$20,000 for each mile of road now or hereafter constructed by said Company as should be thereafter made under the provisions and upon the security of said deed of Mortgage and trust."

AND WHEREAS, the said Company in pursuance to its articles of incorporation and by laws and of said plan of reorganization of the Company approved and ratified by the special meeting of its stockholders

held on the 7th day of May, 1881, has made an issue of preferred stock, twelve million dollars in amount of twelve thousand shares of one hundred dollars each, all of which stock has been subscribed and issued upon the following conditions namely:

I. The preferred stock is entitled to a preferential dividend, not cumulative of seven per cent per annum, payable out of the net earnings of the Company, and, after the first mortgage bonds hereinafter specified have been paid off, out of the gross proceeds of the land grants.

II. Net earnings mean the surplus of the gross earnings of the railroad after the deductions only of all operating and management expenses, repairs, necessary increase of rolling stock and equipment, taxes and the interest and sinking fund payments upon the first Mortgage bonds secured by, and now or hereafter issued under the provisions of the deed of Mortgage and trust, dated June 1st, 1881, and made by the Company to Henry Villard, Horace White and Charles Edward Bretherton.

III. In addition to the preferential dividend above mentioned the preferred stock shall rank equally with the common stock for additional dividends in each year, after the common stock has received seven per cent in such year.

IV. The entire gross proceeds of the lands remaining after payment of the first mortgage bonds above

specified, shall be distributed exclusively among the preferred stockholders.

V. The dividend on the preferred stock, realized from the proceeds of the lands as above defined shall diminish, pro tanto, the preferential right of the preferred stock to dividends out of the net earnings of the road, as against the common stock, but in no case shall any part of the land-proceeds, as above defined, be distributed among the common stock.

VI. The computation of earnings and land proceeds for the purpose of adjusting the amount of the preferential dividend shall be made annually on the 31st day of December and the dividend shall be declared at or before the annual meeting in the following April.

VII. On any dissolution of the Company, the preferred stock shall be refunded in full, before anything is refunded to the common stock.

VIII. No sale, disposition, incumbrance or lease of the railroad or any part of it, nor any mortgage or issue of bonds, except the first mortgage bonds at the rate of \$20,000 a mile hereinbefore specified, nor any operating traffic or running contract in the nature of a lease, or which shall transfer the management or operation of the road, or any part of it, to another Company, nor any consolidation with another Company, nor, any lease of the railroad of another Company, nor any guarantee or assumption of the liabilities of any other Company for bonds, coupons, dividends, or other-

wise, nor any supplementary articles of incorporation of the Company, nor any increase of the preferred or common stock, shall be made, or be valid without the consent of an absolute majority in amount of all the preferred stock actually issued and outstanding, nor shall the Pacific Extension be undertaken without such consent.

IX. The dividends on the preferred stock for the years 1881 and 1882, not exceeding eight per cent in all may be paid in script, convertible into preferred stock instead of in cash.

AND WHEREAS, In further pursuance of said plan of reorganization, it has been resolved and agreed between the said Company and the said Trustees, that the ownership of all the shares of said preferred stock so issued and entitled to the security of these presents, shall be evidenced by certificates issued by said Company, and referring to these presents and upon which certificates the conditions upon which said preferred stock is subscribed and issued as hereinbefore set forth shall be endorsed and otherwise in such form as said Company and said Trustees shall from time to time determine but which certificates shall only be valid when countersigned by, and registered with some respectable bank or trust Company in New York, London and Frankfort-on-the-Main, from time to time agreed upon and appointed in writing by said Trustees and said Company, as Registrars of said preferred stock.

AND WHEREAS, The Farmers Loan and Trust

Company in New York, the London and San Francisco Bank, limited, in London, and the Deutsche Vereinsbank, in Frankfort-on-the-Main, have been so agreed upon and appointed as Registrars of said preferred stock.

NOW, THIS INDENTURE WITNESSETH:
That in pursuance of said resolutions and agreements, and of said plan of reorganization, and to secure the performance of the conditions upon which said preferred stock has been subscribed and issued, as aforesaid, said Oregon and California Railroad Company doth hereby grant, bargain, sell, assign, transfer and convey unto said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, their heirs, assigns and legal successors, as Trustees of these presents, all and singular the railroad lines of said Oregon and California Railroad Company, now constructed and in operation, between East Portland and Roseburg and between Portland and Corvallis and Albany and Lebanon, in the State of Oregon, including the railroads heretofore known as the Oregon Central Railroad, the Western Oregon Railroad and the Albany and Lebanon Railroad in all about three hundred and six and one half ($306\frac{1}{2}$) miles in length running through the Counties of Multnomah, Clackamas, Marion, Linn, Lane, Douglas, Washington, Yamhill, Polk, and Benton in said State of Oregon, together with the ferry, ferry-boats and landings connecting the said railroads at Portland and East Portland, and also all the railroads of said Oregon and California Railroad Company to be hereafter con-

structed. That is to say, the Pacific Extension thereof, from Forrest Grove to Astoria, in accordance with the Act of Congress of May 4, 1870, hereinbefore recited, and the line from Corvallis to Junction and the Southern Extension thereof from Roseburg to California, to a junction with the Central Pacific Railroad in accordance with the act of Congress of July 25, 1866, hereinbefore recited, and also all lands, rights of way, easements and premises now acquired or appropriated or which may hereafter be acquired or appropriated for the purpose of the right of way of said railroads, or for grounds, sidetracks, depots, warehouses, tanks, round-houses, stock-yards—or any other railroad purposes, and also all lands granted by the United States in aid of the construction of the said railroad already completed between the termini aforesaid, and not yet sold estimated to be in amount of about one million nine hundred thousand acres, and all other lands now or which may be hereafter granted to said Company by the United States, and which lands are intended to be more particularly identified as the same are patented by the United States in manner hereinafter provided and also together with all rails, spikes, ties, timber, iron, switches, frogs, depots, warehouses, round-houses, machine shops, bridges, trestle work, and all other buildings or structures now or hereafter belonging to or used for the maintenance or operation of said railroads respectively, including all the offices, docks and ware-houses of the Company in Portland and East Portland, or elsewhere, and all locomotives, cars and other rolling stock, railroad supplies,

fuel, tools and machinery now used, or which may hereafter be used in, or provided for the maintenance or operation of said railroads and telegraph lines and other appurtenances of said railroads, and the franchises to operate same, and all the income, earnings and profits of said railroads, lands, premises and all other present and future property of every description, of said Oregon and California Railroad Company.

TO HAVE AND TO HOLD, the said railroads, lands, rolling stock equipment, premises and property unto the use of said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, their heirs, assigns and legal successors as trustees of these presents as joint tenants, and not as tenants in common, free from all prior liens and encumbrances whatever, (except the prior lien created by the said deed of mortgage and trust to Henry Villard, Horace White and Charles Edward Bretherton, in favor of the first mortgage bonds now issued or which may be hereafter issued, upon the security of said deed of Mortgage and Trust as hereinbefore specified, in trust nevertheless, for the equal benefit and security, pro rata, of every holder of the preferred stock of said Company duly registered as aforesaid, with one of the registrars of said preferred stock and now issued, or which may be hereafter issued, in pursuance of the provisions of these presents, and intended to be secured hereby, without any priority of any one holder over another, by reason of *earlier* issue, or otherwise and for the uses and purposes and with the rights and powers and subject to the provisions, agreements,

covenants and stipulations contained in the following articles, that is to say:

ARTICLE 1. The said Oregon and California Railroad Company hereby covenants with the said Trustees that it will forever duly and faithfully perform each and all the conditions upon which said preferred stock has been subscribed and issued as hereinbefore recited.

ARTICLE 2. And fruther, that if any such conditions shall be violated or broken and such breach or violation shall continue for six calendar months, then said Trustees shall by notice in writing left at the office of the Company in Portland, cancel the subscription of all the preferred stock, and thereupon the said Company shall and will forthwith pay, on demand, at the office of the Company in Portland, to every holder of preferred stock, upon presentation of his certificate, the sum of one hundred dollars for each share held by him.

ARTICLE 3. Until the breach of some condition hereby covenanted to be performed, as aforesaid, said Company shall freely possess the said railroads lands and premises and the income, earnings and profits thereof, and may contract to sell and sell and dispose of the lands granted by the United States and of all other lands owned by the Company, not required for the maintenance and operation of its railroads; but when and after all said first mortgage bonds hereinbefore referred to shall have been paid off, no such sale, nor any conveyance or release of said lands, or any of them shall be valid and effectual unless such sale be at a price approved

by said Trustees and received by them, and such conveyance or release shall be executed by said Trustees, or one of them, or by their attorney or attorneys in fact thereunto, lawfully authorized. And for the purpose of facilitating such sales, when and after all said first mortgage bonds hereinbefore referred to shall have been paid off, said Trustees may from time to time, either concur with said Company in appointing an agent to make such sales and execute such releases and conveyances as their attorney in fact, or may appoint an agent of their own to supervise and join in such sales and to execute such releases and conveyances as their attorney in fact, and they may delegate to any such agent all their power and duties in respect to the sale of lands, except the custody of the proceeds thereof.

ARTICLE 4. Said Trustees shall hold the said proceeds of all lands sold, after all such first mortgage bonds hereinbefore referred to shall have been paid off, upon trust, to distribute the same as dividend upon the preferred stock in conformity with the conditions thereof.

ARTICLE 5. In case said Company shall fail to perform and keep any condition upon which said preferred stock is subscribed and issued, as hereinbefore set forth, it shall be lawful for said Trustees to take possession personally or by their agent or agents, of said railroads, rolling stock and equipment, and the lands and other premises hereby conveyed or which may be then subject to the lien of these presents and to operate the

said railroads and manage the same, and collect and receive the income, earnings and tolls thereof, and the proceeds of lands contracted to be sold; and said Company covenants and agrees that it will on demand surrender such possession and permit said Trustees to use and possess said railroads, rolling stock, lands and premises, without interruption or disturbance, and will permit and suffer said Trustees to collect and get in all freight moneys, ticket balances or other earnings, and the purchase moneys of all lands sold, either then due or thereafter becoming due, and in case it may be necessary, or may be deemed advisable by said Trustees to take legal proceedings for dissolution of said Company or for cancellation of the subscription of the preferred stock, or enforcement of the covenants, stipulations, or trusts, of these presents or to obtain possession of said premises, in pursuance of the provisions of this article, they shall be entitled to the appointment, by the Court in which such legal proceedings are instituted, of a Receiver or Receivers to be nominated by them or to be themselves nominated and appointed Receivers as they may think most expedient.

ARTICLE 6. Said Trustees, when in possession of said railroads, lands and premises shall have the right as irrevocable attorney or attorneys of said Company to bring or defend in the name of the said Company, any action for the collection of income, freight moneys, ticket balances or other earnings, or unpaid purchase money for lands sold, or for obtaining or defending the possession of any property subject to the lien or trusts

of these presents or for the condemnation of lands required for the maintenance or operation of said railroads, or in any manner affecting the maintenance thereof.

ARTICLE 7. Said Trustees are hereby authorized, in their discretion, to accept possession of said railroads, with the rolling stock, lands and appurtenances herein comprised, although no such default as aforesaid shall have been made if said Company shall offer to give up possession to them and thereupon to manage and operate the same, and collect the income and earnings thereof, as hereinafter provided.

ARTICLE 8. It shall be the duty of said Trustees to take possession of said railroads, lands and premises after any such breach as aforesaid, upon written requisition made to them for such purpose by the holders of not less than one quarter in amount of said preferred stock.

ARTICLE 9. Said Trustees shall have full power, from time to time for the purpose of enforcing and administering the trusts and powers of these presents, and for operating and managing or keeping in good order and repair the said railroads, rolling stock, lands and premises, to hire and employ such managers, officers, clerks, agents, attorneys and assistants as they shall deem necessary or useful, and to defray all expenses of such employment and of otherwise executing the trusts of these presents, and to pay any taxes assessed upon the trust premises or any part thereof or any other prior charges thereon,

out of any moneys coming to their hands, and in case said Trustees shall have no funds in their hands, and shall make any payments either for such purposes or in any other manner for the protection or preservation of the trust premises (whether said Trustees shall be in possession of the same or not), the amount so paid, together with interest thereon at the rate of ten (10) per centum per annum shall be a first charge on the trust premises, and the earnings, income and proceeds thereof; and in case said Company shall fail on demand, to repay said Trustees any amount paid by them, as aforesaid, with interest at the rate aforesaid, they may enter upon and take possession of said railroads lands and premises, and retain possession and receive the income, earnings and proceeds thereof, until they shall have recouped themselves the amount so paid, with interest as aforesaid.

ARTICLE 10. In case the Company shall, after cancellation of the subscription of the preferred stock in manner provided in article 2 of these presents, make default in payment to any holder of preferred stock of the sum payable to him under the provisions of said Article, it shall be the duty of said Trustees to forthwith proceed to enforce this security, and to sell said railroads, rolling stock, equipment and appurtenances, and the land and premises comprised herein, or then subject to the lien of these presents, in one lot, or in more than one lot or parcel, and at one time, or at different times, and for cash, or on reasonable credit, payment therefor being secured on the property sold, and other-

wise upon such terms and in such manner as said Trustees may in their discretion think best.

ARTICLE 11. Such sale or sales may be made either without suit by said Trustees, or their duly authorized agent by public auction, at the door of the Court House of Multnomah County in Oregon, after notice of such sale shall have been published at least once a week for four consecutive weeks in the *New York Herald*, or in case said paper shall not be then published, then in some other daily paper of general circulation published in New York, and selected by said Trustees; and in case said sale shall be adjourned, the like four weeks notice shall be given of the adjourned sale; or at the option of said Trustees such sale may be made judicially by action or suit brought by said Trustees for the enforcement of the lien and powers of sale hereby created and granted, or the enforcement, performance or administration of the covenants, powers, stipulations and trusts of these presents, as said Trustees may deem most expedient.

ARTICLE 12. The moneys received from the net earnings of said railroads or the purchase moneys, received on any such sale thereof, as hereinbefore provided, or the purchase moneys received for lands sold, when in possession of said Trustees, shall be applied in the following order: In the first place in the payment of the cost and expenses of the execution of the trusts of these presents, and the management and operation of said railroad, and in the protection and preservation of

the trust premises, including a reasonable compensation to said Trustees (in addition to the ordinary compensation herein provided for) and the fees of counsel and attorneys; and in the next place, in payment of debts and liabilities incurred by said Company otherwise than by or in or through the breach of any of the conditions upon which said preferred stock is subscribed and issued as hereinbefore set forth; and lastly, in payment to every holder of said preferred stock of the sum of one hundred dollars for each share of preferred stock held by him, or a proportionate part thereof in case such moneys shall be insufficient to pay the full amount; and the surplus, if any, of such moneys shall be refunded to said Company.

ARTICLE 13. On any sale by virtue of these presents, the receipt of the said Trustees shall be a sufficient discharge to any purchaser for all purchase money paid by him and any conveyance or assignment made by said Trustees shall vest in said purchaser, all the title and interest of said Company as fully and effectually as if the Company were party thereto.

ARTICLE 14. The Company hereby covenants and agrees with the said Trustees on behalf and for the benefit of the holders of said preferred stock, that it will, from time to time, and at all times hereafter, upon reasonable request, make, execute, acknowledge and deliver all such further acts, deeds, conveyances and assurances in the law for the better assuring unto the said Trustees and their legal successors, from time to time

as Trustees of these presents upon the trusts and for the purposes herein expressed, the said railroads, rolling stock, equipment, lands and premises herein comprised, free from all prior liens and encumbrances, except as herein specified and all other present and future property of said Company of every kind and description as by the said Trustees or their counsel learned in the law shall be reasonably devised, advised or required, and will, from time to time, as the said lands, now or hereafter granted by the United States are patented to said Company, execute proper deeds of further assurance thereof to said Trustees so as to fully identify the lands intended to be comprised in or subjected to the lien of these presents.

ARTICLE 15. All rights or powers by these presents given to, or covenants, stipulations or agreements made with said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, shall survive and enure to the benefit of the Trustee or Trustees for the time being of these presents, in the same manner as if said Trustee or Trustees had been named herein.

ARTICLE 16. In these presents, the word "Trustees" shall be held to mean the said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, while continuing to be Trustees hereof, and the trustees for the time being of these presents, whether all or any be original Trustees or new Trustees.

ARTICLE 17. No Trustees shall be in any man-

ner responsible for any act, default or misconduct of his co-Trustees, nor for that of any Agent, Bank, Banker, Broker or other persons employed by him or by his co-Trustees, unless he shall be chargeable with culpable negligence in their selection or in the continuance of their employment, nor otherwise, except for his own wilful default, misconduct or gross negligence. But except as herein specially authorized, no Trustee shall have power to delegate his powers or authority to his co Trustees or co Trustee, or to any other person whatever.

ARTICLE 18. The Trustees may pay such reasonable compensation as they shall deem proper to all agents, land agents, engineers, officers, attorneys and servants whom they may reasonably employ in the management of their trust, and said Trustees shall be paid by said Company or, in default, out of the trust moneys, the sum of five hundred dollars per annum each, and in addition a further reasonable compensation for such services as they may be called upon to render in taking possession of and managing the premises or selling the same, or bringing suit for the enforcement of the liens or trusts hereby credited or the collection of the moneys secured or to be secured by or becoming payable by virtue of these presents.

ARTICLE 19. In case of the death, resignation or refusal or incapacity to act of any Trustee, the surviving or continuing Trustee or Trustees shall by deed appoint a suitable person as Trustee in the place or stead of the

Trustees so dying, resigning, refusing or becoming incapable; and in case there shall be no surviving or continuing Trustees or Trustee, or such surviving or continuing Trustees or Trustee shall *shall* fail for three calendar months after the death, resignation, refusal or incapacity of their or his previous co Trustee to appoint a new Trustee, then said Company, or any holder of said preferred stock may apply to any judge in the Circuit of the United States for the District of Oregon, to make such appointment and any such judge may appoint a new Trustee by instrument under his hand and seal, without suit or other legal proceedings therefor; but in no case, shall a citizen of the State of Oregon be appointed, or be capable of acting as a Trustee of these presents. And it is hereby declared to be the duty of said Trustees to bring all actions or suits in any way relating to the trusts of these presents in the Courts of the United States whenever such Courts shall have jurisdiction of such action or suit, and not in the Courts of the State.

ARTICLE 20. A majority in amount of the holders of the said preferred stock shall have full power at any time without suit, and whether there be any vacancy or not, to remove all or any of the then existing Trustees and to appoint other Trustees, or another Trustee in their or his place and to increase or diminish the number of Trustees or to appoint a corporation duly authorized to execute trusts in the State of Oregon, as one of the Trustees or as sole Trustee; and any such act of the majority in amount of the holders of preferred

stock shall be deemed to be sufficiently made, executed, evidenced and proved by a writetn instrument or instruments purporting to be signed by the actual holders of the certificates for such preferred stock, whether they shall be registered in the names of such persons on the books of the Company or not, provided that each such certificate shall be either in the name of such holder or transferrable by him as attorney of the holder named in the certificate, and stating the identifying numbers of the certificates of the shares of such stock and the amount of such shares held by each signatary, and the respective signatures to which, and the production to a notary public at the time of signature of the certificates specified, shall be acknowledged before and certified by such Notary Public and his certificate attached and authenticated by his Notarial Seal. No proof shall be necessary of the qualifications of any such Notary so purporting to act in the United States, the British Dominions, Holland, France, or the German Empire.

ARTICLE 21. Any appointment of a new Trustee made by the surviving or continuing Trustees or or Trustee, or the majority of the holders of preferred stock, or a judge, as hereinbefore provided, shall be effectual to vest in the new Trustees or new Trustee all estates, rights, trusts, powers and duties as fully as if they or he were Trustees or a Trustee, party to these presents without any new deed or conveyance, but nevertheless, the said Company hereby covenants in any and every such case to make, upon request of the new Trustees or Trustee, all such deeds, conveyances and

assurances as may be appropriate for more fully and certainly vesting in and confirming to such new Trustees or Trustee such estates, rights, powers, trusts and duties and every resigning Trustee shall, on like request, make and execute such deeds, conveyances and assurances to his successors or successor.

ARTICLE 22. A majority in amount of the holders of the preferred stock at any time secured by these presents may, by written instrument, to be executed and proved as provided in Article 28, at any time before the cancellation of the subscription for the preferred stock, as hereinbefore provided, waive any breach of any condition upon which said preferred stock is subscribed and issued, but such waiver shall be of no effect unless such breach shall have consisted in some act or omission which a majority in amount of the holders of said preferred stock might have previously authorized, or unless such breach shall have consisted in the non-payment of any dividend, and the Company shall together with such instrument or instruments of waiver, hand to the Trustees a sum of money sufficient to pay all such dividend then in arrear, and in the case last mentioned said Trustees shall proceed to pay said dividend as nearly as possible in the manner provided by these presents.

ARTICLE 23. The said Company, for itself, its successors and assigns, doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation, stay, appraisement or redemption laws,

or laws requiring liens or deeds of trust to be foreclosed or enforced by action or suit, and of all other laws now existing or hereafter passed, which, but for this provision would prevent the absolute and unconditional sale of the premises hereby conveyed by a Court or by a Trustee without suit; and on any such sale said Company, for itself, its successors and assigns, covenants to join in and confirm the conveyance to the purchaser.

ARTICLE 24. In case of any sale of said premises whether by the Trustees or by a Court, any purchasers shall be entitled to deliver, in part payment of the purchase money any of the certificates for preferred stock secured by these presents; and such certificates shall be reckoned as equivalent to the sum which would be their proportion of the net proceeds of the sale after the deduction of all expenses. The payment to be made in cash to cover such expenses shall be fixed previously by the Trustees of the Court as the case may be, and announced in the advertisement of sale.

ARTICLE 25. The Trustees shall, whenever requested by the Company, release from the lien of these presents, any land, rolling stock, or other property become useless for the purposes of the railroads by alteration of route, changes in machinery or equipment or otherwise.

ARTICLE 26. On any sale, whether by the Trustees or a Court of the property hereby conveyed, or any part thereof, The Trustees shall have the right to buy

in the same, and a majority in amount of the holders of the preferred stock shall have the right by written instrument, evidenced and proved as hereinbefore provided by Article 28, to fix a sum which it shall be the duty of the Trustees to bid for the property to be sold on behalf and for the benefit of such holders of preferred stock, but only on condition that due provision is made by such majority to the satisfaction of the Trustees or the Court as the case may be for the payment in cash of all expenses incurred in the execution of the trusts of these presents, and of the proportion of such sum payable to the holders of preferred stock not concurring in such request.

ARTICLE 27. On any such purchase the trustees shall hold the property so purchased upon trust for the equal benefit of the holders of preferred stock, who had required the Trustees to buy in the property on their behalf, as the absolute property of said holders of preferred stock, without any right of redemption or resale in favor of said Company or any other holders of preferred stock.

ARTICLE 28. The Trustees shall deposit all trust funds which may from time to time, come to their hands in their joint names, in the London and San Francisco Bank Limited or such other respectable bank or banks, trust Company or Trust Companies, in London, New York, Frankfort, San Francisco or Portland, as they may, from time to time agree upon, and may from time to time invest the same, until required in the pur-

chase of United States Stocks or Bonds at their market value, or in the first mortgage bonds of the Company, at any price not exceeding the par value thereof, or on loans secured on such stocks or bonds.

ARTICLE 29. In computing the majority of the amount of the holders of preferred stock hereinbefore referred to, only the stock actually issued and outstanding shall count, and not any stock belonging to the Company or reserved for the conversion of the issue of income bonds in said plan of reorganization mentioned.

ARTICLE 30. AND WHEREAS, by reason of distance, lapse of time, or other accident, the dates of the actual execution of this Indenture of Trust, by the various parties thereto, may be previous or subsequent to the day of which it bears date, Now it is hereby expressly agreed and declared that this Indenture of Trust shall be dated the second day of June, 1881, and shall be valid and effectual as if executed on the day and date thereof, and that this Indenture of Trust is the Indenture referred to in the certificates for preferred stock hereinbefore mentioned, and is made and executed by and between the parties hereto as and for the Indenture or Deed of Trust securing and intended to secure, the performance of the conditions on which said preferred stock is subscribed and issued;

IN WITNESS WHEREOF, The said Oregon and California Railroad Company pursuant to a resolution of its Board of Directors, duly authorizing the

same, has caused these presents and nineteen duplicates hereof to be sealed with its corporate seal, signed by its president, and attested by its Assistant Secretary; and the said Trustees respectively have hereunto, and unto the said nineteen duplicates hereof, set their hands and seals the day and year above written.

**OREGON AND CALIFORNIA RAILROAD
COMPANY,**

By H. Villard,—President.

Attest: H. H. Tyndale. Assistant Secretary.

(O. & C. R. R. CORPORATE
SEAL.)

H. Villard,)
R. D. Peebles,) TRUSTEES.
C. E. Bretherton.)

Signed, sealed, and
delivered in presence of
Geo A. Saxer as to (H. Villard)
Sydney Starbuck, (C. E. Bretherton).
Signed, Sealed and delivered by Robert
Davie Peebles, in presence of
James Davis,
S. Jackson,

22 Old Broad Street, London.

STATE OF NEW YORK,)
 (ss.
City and County of New York.)

BE IT REMEMBERED, that on this 29th day of July, A. D. 1881, before me, Charles Edgar Mills, a commissioner of the State of Oregon, in and for the State of New York, residing in said City of New York, personally appeared Henry Villard, the President of the Oregon and California Railroad Company, and Hector H. Tyndale, the Assistant Secretary of the same Company, to me respectively personally known to be such, who being by me severally duly sworn, did repose and say, that he, said Henry Villard resides in the City and State of New York; that he, said Hector H. Tyndale. also resides in said City of New York; that he, said Henry Villard is the president and he, said Hector H. Tyndale is the assistant secretary of said Company; that they know the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said Company; and that they, the said Henry Villard and Hector H. Tyndale, signed their names thereto by the like order, as President and Assistant Secretary of said Company respectively, and they further acknowledged the execution of the within instrument to be their free and voluntary act and deed and as the free and voluntary act and deed of said Company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my official seal this 29th day of July, A. D. 1881.

CHARLES EDGAR MILLS,

A Commissioner for the State of Oregon
in New York.

(COMMISSIONERS SEAL)

STATE OF NEW YORK,)
) ss.
City and County of New York,)

BE IT REMEMBERED, That on this 29th day of July, A. D. 1881, before me, Charles Edgar Mills, a commissioner of the State of Oregon, in and for the State of New York, residing in said City of New York, personally appeared Henry Villard and Charles Edward Bretherton, Trustees in the foregoing deed of Trust, to me personally known to be the identical persons described in and who executed the foregoing instrument as trustees, and they severally acknowledged to me that they executed the same freely and voluntarily, as their act and deed, for the uses and purposes therein mentioned.

WITNESS MY HAND AND OFFICIAL SEAL, this 29th day of July, A. D. 1881.

CHARLES EDGAR MILLS,

A Commissioner for the State of Oregon
in New York.

(COMMISSIONERS SEAL)

CONSULATE GENERAL

of

THE UNITED STATES OF AMERICA

for

GREAT BRITAIN and IRELAND, LONDON.)

On this 17th day of August, 1881, before me, Adam Badeau, Consul General and ex-officio a Notary Public of the United States of America at London, England, personally appeared Robert Davie Peebles, to me known to be the person of that name described in and who has executed the foregoing deed of Mortgage and Trust and then and there acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein contained.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official Notarial Seal, at London, aforesaid, the day and year above written.

ADAM BADEAU,

(U. S. CONSULATE SEAL) Consul General,
U. S. A., London.

STATE OF OREGON,)
) ss.
County of Multnomah,)

No. 9574

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement Oregon and California Railroad

Company to Henry Villard et al, recorded in Book 27 page 179 Record of Mortgages, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 6th day of May A. D. 1913.

(Seal) JNO. B. COFFEY, County Clerk.
Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 398

is a certified copy of mortgage executed by the Oregon and California Railroad Company to The Farmers Loan and Trust Company, May 25, 1883, recorded page 33, Book 41, Records of Mortgages of Multnomah County, Oregon, on November 5, 1883, and recorded about the same time in the Records of mortgages of all other counties in which any part of said granted lands were situated, which said exhibit, is as follows:

This indenture made the 25th day of May in the year one thousand eight hundred and eighty three between the Oregon and California Railroad Company (a corporation organized and existing under the laws of Oregon and hereinafter called the Company) of the

first part: The Farmers Loan and Trust Company of the City and State of New York) hereinafter called the Trustee) of the second part and Robert Davie Peebles George Henry Hopkinson and Patrick Buchan of the third part.

Whereas By an Act of Congress entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon" and approved July 25, 1866, it was amongst other things enacted as follows "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled That the "California and Oregon Railroad Company" Organized under an act of the State of California to protect certain parties in and to a railroad survey "to connect Portland in Oregon with Marysville in California" approved April 6, 1863. a-nd such company organized under the laws of Oregon as the Legislature of said State shall hereafter designate, be and they are hereby authorized and empowered to lay out locate, construct finish and maintain a railroad and telegraph line between the City of Portland in Oregon and the Central Pacific Railroad in California in the Manner following towit:

The said California and Oregon Railroad Company to construct that part of the said Railroad and telegraph (line) within the State of California beginning at some point(to be selected by said company) on the Central Pacific Railroad in the Sacramento Valley in

the State of California and running thence northerly through the Sacramento and Shasta Valleys to the Northern Boundary of the State of California and the said Oregon Company to construct that part of the said railroad and telegraph line within the State of Oregon beginning at the City of Portland in Oregon and running thence southerly through the Willamette Umpqua and Rogue river valleys to the southern boundary of Oregon where the same shall connect with the part aforesaid to be made by the first named Company Provided that the Company completing its respective part of the said railroad and telegraph (line) from either of the termine herein named to the line between California and Oregon before the other Company shall have likewise arrived at the same line shall have the right and the said Company is hereby authorized to continue in constructing the same beyond the line aforesaid with the consent of the State in which the unfinished part may lie upon the terms mentioned in the act until the said parts shall meet and connect and the whole line of the said railroad and telegraph (line) shall be completed”

“Section 2 And be)it) further enacted. That there be and hereby is granted to the said companies their successors and assigns for the purpose of aiding in the construction of said railroad and telegraph line and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the line of said railroad every alternate section of public land. not mineral designated by odd numbers to the

amount of twenty alternate sections per mile) ten on each side) of said Railroad line and when any of said alternate sections or parts of sections shall be found to have been granted sold reserved occupied by homestead settlers pre-empted or otherwise disposed of other lands, designated as aforesaid shall be selected by said companies in lieu thereof under the direction of the Secretary of the Interior in alternate sections designated by odd numbers as aforesaid nearest to and not more than ten miles beyond the limits of said first named alternate sections and as soon as the said companies or either of them shall file in the office of the Secretary of Interior a map of the survey of said railroad or any portion thereof not less than sixty continuous miles from either terminus the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad so far as located and within the limits specified. The lands herein granted shall be applied to the building of said road within the states respectively wherein they are situated, And the sections and parts of sections of lands which shall remain in the United States within the limits of the aforesaid grant shall not be sold for less than double the minimum price of public lands when sold. Provided that bona fide actual settlers under the pre-emption laws of the United States may after due proof of settlement improvements and occupation as now provided by law purchase the same at the price fixed for said lands at the date of such settlement improvement and occupation. And provided also That settlers under the provisions of the homestead

act, who comply with the terms and requirements of said act shall be entitled within the limits of said grant to patents for an amount not exceeding eighty acres of the land so reserved by the United State anything in this act to the contrary notwithstanding."

Section 3 And be it further enacted. That the right of way through the public lands be and the same is hereby granted to said companies for the construction of said railroad and telegraph line; and the right, power and authority are hereby given to said companies to take from the public lands adjacent to the line of said road, earth stone timber water and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of the said railroad where it may pass over the public lands including all necessary grounds for stations buildings workshops depots machine shops switches side tracks turn tables water stations or any other structures required in the construction and operating of said road"

And whereas By another act of Congress entitled " An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon" and approved May 4, 1870 it was amongst other things enacted as follows " Be it enacted by the Senate and House of Representatives of the United State of America in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria and from a suitable point of Junc-

tion near Forest Grove to the Yamhill river near McMinnville in the State of Oregon there is hereby granted to the Oregon Central Railroad Comapny now engaged in constructing the said road and to their successors and assigns the right of way through the public lands of the width of One Hundred feet on each side of said road and the right to take from adjacent public lands materials for constructing said road and also the necessary lands for depots, stations side tracks and other needful uses in operating the road not exceeding forty acres at any one place and also each alternate section of the public lands not mineral, excepting coal or iron lands designated by odd numbers nearest to the said road to the amount of ten such alternate sections per mile, on each side thereof not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this act. And in case the quantity of ten full sections per mile cannot be formed on each side of said road. Within the said limits of twenty miles other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty five miles from the track of said road to make up such deficiency."

And whereas said Oregon and California Railroad Company has succeeded to and become invested with and now is possessed of and entitled to all the grants, rights franchises and privileges conferred upon the Oregon Company referred to in the first hereinbefore recited Act of Congress and of the Oregon Central Rail-

road Company mentioned in the secondly hereinbefore recited act of Congress And whereas By a Deed of Mortgage and Trust dated the first day of June 1881 the Company mortgaged its railroads, lands and all other property present and future to Henry Villard, Horace White and Charles Edward Bretherton their heirs assigns and legal successors as trustees to secure an immediate issue of 6,000 First Mortgage Bonds for the aggregate amount of Six Million dollars in gold coin bearing interest at the rate of six per cent per annum payable half yearly on the first days of January and July and redeemable at 110 per cent of the par value thereof in manner in said bonds and mortgage specified all of which 6,000 bonds have been issued and are now outstanding and also to secure such further issues of first mortgage bonds not exceeding in the whole the rate of \$20,000 for each mile of railroad now or hereafter constructed by said Company as should be thereafter made under the provisions and upon the security of said Deed of Mortgage and Trust.

And whereas The said Company has heretofore issued its preferred stock twelve million dollars in amount in one hundred and twenty thousand shares of one hundred dollars each. All of which stock is fully paid and was subscribed and issued upon the following conditions namely;

“I. The preferred stock is entitled to a preferential dividend not cumulative of seven per cent per annum payable out of the net earnings of the Company

and after the first mortgage bonds hereinafter specified have been paid off out of the gross proceeds of the land grants.

“II. Net earnings names the surplus of the gross earnings of the railroad after the deduction only of all operating and management expenses, repairs necessary increase of *railing* stock and equipment, taxes and the interest and sinking fund payments upon the first mortgage bonds secured by and now or hereafter issued under the provisions of the Deed of Mortgage and Trust, dated June 1, 1881, and made by the Company to Henry Villard Horace White and Charles Edward Bretherton.

III. In addition to the preferential dividend above mentioned the preferred stock shall rank equally with the common stock for additional dividends in each year after the common stock has received seven per cent in such year/

“IV. The entire gross proceeds of the lands remaining after payment of the first mortgage bonds above specified shall be distributed exclusively among the preferred stock holders.

“V. The dividend on the preferred stock realized from the proceeds of the lands as above defined shall diminish pro tanto the preferential right of the preferred stock to dividends out of the net earnings of the road as against the common stock but in no case shall any part of the land proceeds as above defined be distributed among the common stock.

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May 5, 1871, Walter H. Smith, Assistant Attorney General, to C. Delano, Secretary, expressing opinion as to validity of assignment by the

Oregon Central Railroad Company to the Oregon and California Railroad Company, and that patents should be issued to the Oregon and California Railroad Company.

May 8, 1871, C. Delano, Secretary, to A. T. Akerman, Attorney General, in reference to claims of W. E. Chandler.

July 16, 1868, A. M. Loryea to O. H. Browning, Secretary of the Interior, advising that Gaston's organization is illegal.

April 30, 1868, resolution of acceptance of grant by Oregon Central Railroad Company April 29, 1868, certified by S. A. Clarke, Secretary O. C. R. R. Co.

May 9, 1871, A. T. Akerman, Attorney General, to C. Delano, Secretary of the Interior, in answer to letter May 8, 1871, above.

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Correspondence between Jos. S. Wilson, President of the European and Oregon Land Company, and Willis Drummond, Commissioner of the General Land Office, running from March 21, 1871, to February 24, 1872, in re status of lands in the grant.

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Attorney General for complainant, and by
Wm. F. Herrin, Wm. D. Fenton and Wm.
Singer, Jr., for defendant, filed October 31,
18987628

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Certified copy of stipulation case No. 2661, filed
in United States Circuit Court, District of
Oregon, United States versus Oregon and
California Railroad Company, signed by John
H. Hall, United States Attorney, and H. M.
Hoyt, Acting United States Attorney Gen-
eral, for complainant, and Wm. D. Fenton and
Wm. Singer, Jr., for defendant, filed October
6, 19027629

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gon, United States versus Oregon and Cali-
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eral, for complainant, and Wm. D. Fenton
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fornia Railroad Company and Oregon Central
Railroad Company versus the United States,
signed by F. P. Mays, United States District
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No. 2400

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United
States for the District of Oregon

OREGON & CALIFORNIA RAILROAD

COMPANY, A CORPORATION, *et al.*,

Defendants and Appellants

JOHN L. SNYDER, *et al.*,

Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,

Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA

Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XV

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“VI. The computation of earnings and land proceeds for the purpose of adjusting the amount of the preferential dividend shall be made annually on the 31st of December and the dividend shall be declared at or before the annual meeting in the following April.

“VII. On any dissolution of the Company the preferred stock shall be refunded in full before anything is refunded to the common stock.

“VIII. No sale, disposition incumbrance or lease of the railroad or any part of it nor any mortgage or issue of bonds except the first mortgage bonds at the rate of \$20,000 a mile hereinbefore specified nor any operating, traffic or running contract in the nature of a lease or which shall transfer the management or operation of the road or any part of it to another Company nor any consolidation with another Company nor any lease of the railroad of another Company nor any guarantee or assumption of the liabilities of any other Company for bonds coupons dividends or otherwise nor any supplemental articles of incorporation of the Company nor any increase of the preferred or common stock shall be made or be valid without the consent of an absolute majority in amount of all the preferred stock actually issued and outstanding nor shall the Pacific Extension be undertaking without such consent.

“IX. The dividends on the preferred stock for the year 1881 and 1882 not exceeding eight per cent in all may be paid in scrip convertible into preferred stock

instead of in cash.” And whereas By a Deed of Trust dated the second day of June 1881 said Company did grant and convey all an singular its railroad, lands and other property present and future to Henry Villard, Robert Davis Peebles and Charles Edward Bretherton their heirs, assigns and legal successors as trustees (subject however, to the prior lien created by the said Deed of Mortgage and Trust of June First 1881) to secure the performance of the conditions upon which said preferred stock was subscribed and issued.

And whereas the said George Henry Hopkins and Patrick Buchan two of the parties of the third part hereto have been duly substituted in the place of Henry Villard and Charles Edward Bretherton and are together with said Robert Davies Peebles the present trustee under said Deed of Trust of June second 1881.

And whereas The said Company is at present engaged in the construction of the southern extension of its railroad to a junction with the Central Pacific Railroad at or near the boundary line between Oregon and California and Proposes to complete its railroad from Corvallis to Junction and from a point at or near Forest Grove to tide water at or near Astoria.

And whereas It has been ascertained from the Estimates of the Engineers engaged in the survey location and construction of the proposed extensions of the said railroad that the amount of \$20,000. for each mile of railroad now or hereafter constructed and being actually constructed at the time of issue to which the issue of

said First Mortgage Bonds is limited by the conditions of said Deed of Mortgage and Trust will not be sufficient to construct and complete said proposed extensions.

And Whereas The Holders of an absolute majority in amount of all the preferred stock actually issued outstanding have authorized and consented to the creation and execution of second Mortgage Bonds of said Company of the description and on the terms and conditions hereinafter expressed and the creation and execution of these presents and have authorized and directed the said Robert Davie Peebles, George Henry Hopkinson and Patrick Buchan as Trustees of the said Deed of Trust of June second 1881 to join in and execute the said Second Mortgage for the purpose of postponing the lien of the said Deed of Trust of June second 1881 to the lien or charge created or intended to be created by these presents.

And whereas The Company in accordance therewith has resolved to make an issue of Second Mortgage Bonds as hereinafter described to be limited to the rate of \$10,000. for each mile of railroad now or hereafter constructed as hereinafter specified and actually constructed at the time of issue and which bonds an amount equal to \$10,000 per mile for each mile of road now constructed shall be now issued the remainder as the construction of said railroad progresses and to secure the payment of said bonds and interest thereon in the manner herein provided.

And whereas said bonds intended to be secured by these presents together with the coupons annexed thereto and the certificate of the Trustees thereon have been prepared and are numbered consecutively from number one onwards and dated the second day of April 1883 and are in form following that is to say:

United States of America, State of Oregon, Oregon and California Railroad Company of Portland Oregon.

Second Mortgage seven per Cent Gold Bond
Amount limited to \$10,000 per mile of constructed Road.

\$1000.

No0000

\$1,000.

The Oregon and California Railroad Company for value received hereby binds itself to pay to the bearer at the office of the Company in the City of New York on the first day of April A D 1933 the sum of one thousand dollars in United States gold coin of the present standard and to pay in the meantime interest thereon in like gold, coin at the rate of seven per centum per annum half yearly on the first days of April and October in each year free of tax upon presentation and surrender at such office as they respectively mature of the one hundred coupons annexed. This bond is one of the second mortgage seven per Centum Gold Bonds of the Oregon and California Railroad Company issued and to be issued only at the rate of \$10,000 for each mile of railroad now or hereafter constructed and being actually constructed at the time of issue all being of the

same amount form, tenor and date and payable in the same manner and differing only in the indentifying numbers the date of the Trustees certificate and and the number of coupons annexed and all of which bonds issued and to be issued are equally secured by a Mortgage dated May 26th, 1883, of all the railroads of said company constructed and to be constructed that is to say from Portland to Astoria in accordance with the act of Congress of May 4th 1870 and to Junction and from East Portland to California in accordance with the Act of Congress of July 25th 1866 and of all the rallying stock and other property present and future of said Company of every description except the lands granted by the United States to aid in the construction of the said railroads unto the Farmers Loan and Trust Company as Trustees (subject however to the redeemable prior lien of a First Mortgage dated June 1st 1881 made to secure the payment of the principal and interest of the First Mortgage Bonds of said Company issued and to be issued at the rate of only \$20,000 for each mile of railroad now or hereafter constructed and being actually constructed at the time of issue which Mortgage is recorded in the office of the County Clerk in Portland Oregon and in all other Counties in which any part of the railroads and lands of said Company are situated.

Said Company further binds itself to pay forthwith upon demand the amount of this bond as aforesaid in case said Company shall fail for six calendar months to pay any coupon annexed to this bond when the same becomes due and such default in payment of interest

shall not have been waived by a majority in amount of the holders of said bonds then outstanding in the manner provided in said Mortgage. This bond is not valid unless the certificate endorsed hereon shall be executed by said Trustee.

In Witness whereof said Company has caused these presents to be sealed with its corporate seal, signed by its President and attested by its assistant secretary this second day of April 1883.

(Seal)

President

Attest

Assistant Secretary.

(Form of Last Coupon.)

The Oregon and California Railroad Company will pay the bearer on the first day of April 1933 thirty five Dollars in United States gold coin free of tax at the office of the Company in New York being six months interest in Second Mortgage bonds of said Company.

No.

Treasurer

(Trustee's Certificate)

The farmers Loan and Trust Company hereby certifies that the within bond is one of the second Mortgage Seven Per cent Gold Bonds of the Oregon and California Railroad Company secured by the within mentioned Mortgage dated May 26th 1883, and made by said Railroad Company to the said Trust Company as Trustee and that the total amount of said bonds certified does not exceed the rate of \$10,000 for each mile of actually constructed railroad.

Trustee

Now this indenture Witnesseth That in pursuance of said resolutions and to secure the punctual payment of said bonds now to be issued and all such bonds as shall be hereafter issued on the security of these presents (but not exceeding in all ten thousand dollars for each mile of road actually constructed at the time of issue) and the interest thereon the Company doth hereby grant, bargain, sell, assign transfer and convey and the said Robert Davie Peebles, George Henry Hopkinson and Patrick Buchan for the purpose of postponing the lien of said Deed of Trust of June second 1881 and of said preferred stock secured by the same to the lien of these presents and of the bonds to be secured hereby do hereby release and convey unto the said Farmers Loan and Trust Company its assigns and legal successors as Trustees of these presents all and singular the railroad lines of the Company now constructed and in operation between East Portland and the southern terminus of the East Side line (being at this date some fifty miles more or less south of Roseburg) and between Portland and Corvallis and between Albany and Lebanon in the State of Oregon including the railroads heretofore known as the Oregon Central Railroad the Western Oregon Railroad and the Albany and Lebanon Railroad being in all including sidings about three hundred and eighty miles in length running through the Counties of Multnomah Clackamas Marion, Linn, Lane, Douglas, Washington, Yamhill, Polk, and Benton in said State of Ore-

gon together, with the ferry boats and landings connecting the said railroads at Portland and East Portland and also all the railroads of said Oregon and California Railroad Company to be hereafter constructed that is to say "from a point at or near Forest Grove to Astoria in accordance with the act of Congress of May 4th 1870 hereinbefore recited and from Corvallis to Junction and from the said southern terminus to a Junction with the Central Pacific Railroad at or near the boundary line between California and Oregon in accordance with the Act of Congress of July 25th 1866 hereinbefore recited and all lands rights of way, easements and premises now acquired or appropriated or which may hereafter be acquired or appropriated for the purpose of the right of way of said railroads or for grounds side tracks, depots warehouses tanks round-houses stock yards, or any other railroad purposes, and together with all rails, spike ties, timber, iron switches frogs, depots, warehouses round houses machine shops bridges, trestlework and all other buildings or structures now or hereafter belonging to or used for the maintenance or operation of said railroads respectively including all the offices docks, and warehouses of the Company in Portland and East Portland or elsewhere and all locomotives, cars and other rolling stock, railroad and supplies fuel tools and machinery now used or which may hereafter be used in or provided for the maintenance or operation of said railroads and all telegraph lines and other appurtenances of said railroads and the franchise to operate the same and all income earnings, and

profits of said railroads lands and premises and all other present and future property of every description of the said Oregon and California Railroad Company. Saving and excepting and reserving however to the Company out of the conveyance and mortgage hereby made all lands granted by the United States in aid of the Construction of the said Railroads already completed between the termini aforesaid and not yet sold and all lands which may be hereafter granted to the Company by the United States.

To have and to hold the said railroads, lands rolling stock equipment, premises and property unto the use of said Farmers Loan and Trust Company its assigns and legal successors as trustee of these presents free from all prior liens and encumbrances whatsoever except the prior lien created by the said Deed of Mortgage and Trust to Henry Villard, Horace White and Charles Edward Bretherton securing the said First Mortgage Bonds hereinbefore referred to and subject thereto in trust nevertheless for the equal benefit and security pro rata of every holder of any of said bonds to be now issued or which may be hereafter issued as aforesaid and intended to be secured hereby without any priority of any one bond over another by reason of earlier issue or negotiation and for the uses and purposes and with the rights and powers and subject to the provisions agreements covenants and stipulations contained in the following articles that is to say.

Article I The company hereby covenants with the Trustee that it shall and will proceed ith all reasonable dispatch to complete its said railroads to California. That cars can run through from Portland to San Francisco and will keep all the railroads from time to time constructed and rolling stock and other property of the Company in good order and repair and will reconstruct replace and restore all such or so much and such parts thereof as may be worn out wrecked destroyed or displayed and will pay all taxes assessed against said railroads and premises and will pay the principal moneys secured by all bonds to be issued on the security of these presents and all interest due thereon at the times and places and in the manner in said bonds and the coupons annexed thereto respectively specified and perform all the conditions and stipulations in said bonds expressed and contained.

Article 2. And further that if any coupon or any one of said bonds shall not be paid on presentation as therein provided and shall remain unpaid for six calendar months and such default shall not be waived in manner hereinafter specified then the Company shall and will forthwith pay on demand at the place and in the manner in said bond specified the principal of all such bonds.

Article 3. Until default in any payment required by the previous articles the Company shall freely possess the said railroads and premises and the income earnings and profits thereof and may contract to sell and

dispose of all lands comprised in this mortgage which shall not be required for the maintenance and operation of its railroads; and upon the request of the Company the Trustee shall release all such lands so sold by apt and, proper writings.

Article 4. In case the Company shall fail to keep the said railroads rolling stock, equipments and premises herein comprised or at any time hereafter subject to the lien of these presents in good order and repair or in case default shall be made in payment of any coupon on any of said bonds or any part thereof, and such default shall continue for six calendar months or in payment of any taxes assessed against said railroads rolling stock equipment, premises and property hereby mortgage it shall be lawful for the Trustees to take possession personally or by its agent or agents of said railroads, rolling stock and equipment and other premises hereby conveyed or which may be there subject to the lien of these presents and to operate the said railroads and manage the same and collect and receive the income earnings and tolls thereof and the proceeds of lands contracted to be sold and the Company covenants and agrees that it will on demands surrender such possession and permit the Trustees to use and possess said railroads rolling stock and premises without interruption or disturbance and will permit and suffer the Trustee to collect any get in all freight moneys ticket balances or other earnings either there due or thereafter becoming due and in case it may be necessary or may be deemed advisable

by the trustee to take legal proceedings for foreclosure of this mortgage or to obtain possession of said premises in pursuance of the provisions of this article it shall be entitled to the appointment of a Receiver or Receivers to be nominated by it or to be itself nominated and appointed Receiver as it may think most expedient.

Article 5. The Trustee when in possession of said railroads and premises shall have the right as irrevocable attorney of the Company to bring or defend in the name of the Company any actions for the collection of income freight moneys tickets, balance or other earnings or for obtaining or defending the possession of any property subject to the lien or trusts of these presents or for the condemnation of lands required for the maintenance or operation of said railroads or in any manner effecting the maintenance thereof.

Article 6. The Trustee is hereby authorized in its discretion to accept possession of said railroads with the rolling stock and appurtenances herein comprised although no such default as aforesaid shall have been made if the Company shall offer to give up possession to it. and thereupon to manage and operate the same and collect the income and earnings thereof as hereinbefore provided.

Article 7, It shall be the duty of the Trustee to take possession of said railroads and premises after any such default as aforesaid upon written requisition made to it for such purpose by the holders of not less than one quarter in amount of said bonds then outstanding.

Article 8. The Trustee shall have full power from time to time for the purpose of enforcing and administering the trusts and powers of these presents and for operating and managing or keeping in good order and repair the said railroads rolling stock and premises to hire and employ such managers, officers clerks agents, attorneys and assistants as it shall deem necessary or useful and to defray all expenses of such employment and of otherwise executing the trusts of these presents and to pay any taxes, assessed upon the trust premises or any part thereof or any other prior charges thereon out of any moneys coming to its hands and in case the Trustee shall have no funds in his hands and shall make any payments either for such purposes or in any other manner for the protection or preservation of the trust premises (whether the Trustee shall be in possession of the same or not) the amounts so paid together with interest thereon at the rate of ten (10) per centum per annum shall be a first charge on the trust premises (subject however to the said Deed of Mortgage and Trust of the first day of June 1881 and the first Mortgage Bonds thereby secured) and the earnings income and proceeds thereof and in case the Company shall fail on demand to repay the Trustee any amount paid by it as aforesaid with interest at the rate aforesaid it may enter upon and take possession of said railroads and premises in the same manner as if the Company had made default in payment of interest on the bonds hereby secured and retain possession and received the income earnings and proceeds thereof and until it shall have recouped itself

the amount so paid, with interest as aforesaid.

Article 9. After any such default as aforesaid in payment of interest or any part thereof and such default shall have continued for one year and shall not have been waived as hereinbefore provided or in case the principal of any of said bonds shall not be paid on the first day of April 1933 it shall be the duty of the Trustee to forthwith proceed to enforce this security and to sell (subject to any prior lien) If any there shall be under said Mortgage of June first 1881 made to secure said First Mortgage Bonds said railroads rolling stock equipment and appurtenances and other the premises comprised herein or there subject to the lien of these presents, in one lot or in more than one lot or parcel and at one time or at different times and for cash or on reasonable credit payment therefor being secured on the property sold and otherwise upon such terms and in such manner as the Trustee may in its discretion think best for the parties in interest.

Article 10. Such sales may be made either without suit by the Trustee or duly authorized agent by public auction at the door of the Court House of Multnomah County in Oregon after notice of such sale shall have been published at least once a week for four consecutive weeks in the New York Herald (or in case said paper shall not be there published then in some other daily paper of general circulation published in New York and Selected by the Trustee) and in case said sale shall be adjourned the like four weeks notice

shall be given of said adjourned sale or at the option of the Trustees such sale may be made judicially by action or suit brought by the Trustee for the foreclosure of this mortgage and enforcement of the liens hereby created or administration of the trusts of these presents as the Trustee may deem most expedient.

Article 11, The moneys received from the net earnings of said railroads or purchase money on any such sale thereof as hereinbefore provided when in possession of the Trustee shall be applied in the following order. In the first place in payment of the costs and expenses of the execution of the trusts of these presents and the management and operation of said railroads and the protection and preservation of the trusts premises including a reasonable compensation to the Trustee (in addition to the ordinary compensation salary herein provided for) and the fees of counsel and attorneys and secondly in payment of all coupons then overdue in the order in which they shall have become due those of earlier date having priority over those of later date and thirdly as payment of the principal of any of said bonds and the remainder if any there be shall be paid to the Company to be divided between the preferred and common stockholders of the Company according to their respective rights.

Article 12. On any sale by virtue of these presents, the receipt of the Trustee shall be a sufficient discharge to any purchaser for all purchase money paid by him and any conveyance or assignment made by the Trustee

shall vest in said purchaser all the title and interest of the Company as fully and effectually as if the Company were party thereto.

Article 13. The Company hereby covenants and agrees with the Trustee on behalf and for the benefit of the holders of the bonds intended to be secured by these presents. That it will from time to time and at all times hereafter upon reasonable request made, execute, acknowledge and deliver all such further acts, deeds conveyances and assurances in the law for the better assuring into the Trustee and its legal successors from time to time as Trustee of these presents upon the trusts and for the purposes herein expressed the said railroads, rolling stock equipment and premises herein comprised free from all prior liens and encumbrances excepting the prior lien of the First Mortgage hereinbefore specified and all other present and future property of the Company of every kind and description as by the Trustee or its counsel learned in the law shall be reasonably devised advised or required.

Article 14. On payment and cancellation of all of said bonds and the coupons thereto attached and payment of all expenses incurred by the Trustees in the execution of the trusts of these presents this indenture shall become void and all the estate and interest of the trustee in the premises conveyed hereby and the lien created thereon by these presents shall absolutely cease and determine.

-Article 15. All rights or powers by these presents,

give to or covenants stipulations or agreements made with the said Farmers Loan and Trust Company shall survive and enure to the benefit of the Trustee or Trustees for the time being of these presents in the same manner as if the said Trustee or Trustees has been named herein and the word "Trustee" shall be held to mean the said Farmers Loan and Trust Company while continuing to the trustee hereof and the Trustee or Trustees for the time being of these presents.

Article 16. The Trustee shall bin in no manner responsible for any act default or misconduct of any agent bank banker broker or other persons employed by it unles- it shall be chargeable with culpable negligence in their selection or in the continuance of their employment nor otherwise except for its own wilfy default misconduct or gross nigligence. But except as herein specially authorized the Trustee shall have no power to delegate its power or authority to any other person whatsoever.

Article 17. The Trustee shall be paid by the Company or in default of the trust moneys the sum of one dollar per bond for its entire service in the execution of the trusts herein contained until default and in addition in case of default a further reasonable compensation for such additional services as it may be called upon to render in taking possession of and managing the premises or selling the same or bringing suit for the foreclosure of these presents enforcement of the liens or trusts hereby created or the collection of the moneys secured or to be secured by these presents.

Article 18. In case of the resignation of the Trustee or of the incapacity failure or refusal of the Trustee to perform any of its duties or obligations under this trust then the Company shall apply to a Judge in the Circuit Court of the United States for the District of Oregon to remove the Trustee so incapacitated failing or refusing to act and to appoint a new Trustee or Trustees. and any such judge may appoint a new Trustee of Trustees by instrument under his hand and seal without suit or other legal proceedings therefor in the place of the Trustee so resigning incapacitated failing or refusing to act but in no case shall a citizen of the State of Oregon be appointed or be capable of acting as a trustee of these Presents? And it is hereby declared to be the duty of the Trustee to bring all actions or suits in any way relating to the trusts of these presents in the courts of the United States whenever such courts shall have jurisdiction of such action or suit and not in the Courts of the State?

Article 19. A Majority in amount of the Holders of the outstanding bonds at any time secured by these presents shall have full power at any time without suit to remove the then existing Trustee in its or their place as one of the Trustees or as sole Trustee and any such act of the Majority in amount of the bondholders shall be deemed to be sufficiently made executed evidenced and proved by a written instrument or instruments purporting to be signed by the bondholders and stating the identifying numbers and the amount of the bonds held

by each signer and the respective signature to which and the fact of the production to a notary at the time of the signature of the bonds specified shall be acknowledged before and certified by such notary public and his certificates shall be attached and authenticated by his notarial seal. No proof shall be necessary of the qualifications of any such notary so purporting to act in the United State, the British Dominions Holland France or the German Empire.

Article 20. Any appointment of new Trustees or a new Trustee made by the majority of the bondholders or a judge as herein before provided shall be effectual to vest in the New Trustees or new Trustee all estates right, trusts powers and duties as fully as if they or he or it were trustees or a trustee party to these presents without any new deed or conveyance but nevertheless the Company hereby covenants in any and every such case to make upon request of the New Trustees or Trustee all such deeds conveyances and assurances as may be appropriated for more fully and certainly vesting in and confirming to such new Trustees or Trustee such estate rights, powers trusts and duties and every resigning Trustee shall on like request make and execute such deeds conveyances and assurances to his or its successors.

Article 21. A Majority in amount of the holders of the outstanding bonds at any time secured by these presents may by written instrument to be executed and proved as provided in article 19 at any time before the

actual sale of the premises waive any default in payment of interest yet so far only that the principal of the bonds shall cease to be payable forthwith in case said principal shall have become so payable by reason of such default but such waiver shall be of no effect unless the company shall together with such instrument or instruments of waiver hand to the Trustee a sum of money sufficient to pay all interest then in arrear and the Trustee shall then proceed to pay said interest in the manner provided by these presents.

Article 22. The company itself its successors and assigns doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation stay appraisement of redemption laws or laws requiring liens or mortgages to be foreclosed by action or suit and of all other laws now existing or hereafter passed which but for this provisions would prevent the absolute and unconditional sale of the premises hereby conveyed by a court or by the Trustees without suit and on any such sale the Company for itself its successors and assigns covenants to join in and confirm the conveyance to the purchaser.

Article 23. In case of any sale of said premises whether by the Trustee or by a court any purchaser shall be entitled to credit in part payment of the purchase money for any of the outstanding coupons or bonds secured by these presents and owned by him upon surrendering such coupons or bonds and such coupons or bonds shall be reckoned as equivalent to the sum which

would be their proportion of the net proceeds of the sale after the deduction of all expenses. The Payment to be made in cash to cover such expenses shall be fixed prviously by the Trustee or the Court as the case may be and announced in the advertisement of sale.

Article 24. The trustee shall have power to release from the lien of these presents any land rolling stock or other property become useles- for the purpose of the railroads by alteration of route changes in machinery or equipment otherwise but only on condition that the property so sold forthwith replaced by other property of equal value and subjected to the lien of these presents.

Article 25. On any sale whether by the trustee or a court of the property hereby conveyed or any part thereof the Trustee shall have the right to buy in the same and a majority in amount of the holders of the outstanding bonds shall have the right by written instrument evidenced and proved in the same manner as provided in article 19 to fix a sum which it shall be the duty of the Trustee to bid for the property to be sold on behalf and for the benefit of such bondholders but only on condition that due providions is made such majority to the satisfaction of the Trustee or the court as the case may be for the payment in cash of all expenses incurred in the execution of the trusts of these presents and of the proportion of such sum payable to the bondholders not concurring in such request.

Article 26. On any such pruchase the Trustee shall

hold the Property so purchased upon trust for the equal benefit of the bondholders who had required the trustee to buy in the property on their behalf as the absolute property of said bondholders without any right of redemption or resale in favor of the Company or any bondholder.

-Article 27. The Trustee shall deposit all trust funds which may from time to time come to its hands in its name in such respectable bank or banks trust company or companies in London New York, Frankfort San Francisco or Portland as it may from time to time decide upon.

Article 28. Of the said issue of second Mortgage Bonds an amount equal to \$10,000 for each mile of the railroad of the Company now constructed may be issued immediately and whenever the Company shall have constructed any additional section of said railroad of five consecutive miles the company may prepare and execute such a number of additional bonds to be secured by these presents as shall not exceed in the whole including the bonds to be now issued the rate of \$10,000 for each mile of constructed road and upon inspection of the certificate of the Supervising Engineer of the Trustee or Trustees for the time being under the said Deed of Mortgage and Trust dated June first 1881 made as provided in article 42 thereof the Trustee under these presents shall certify and deliver to the Company the said bonds of the issue hereby secured at the rate aforesaid.

Article 29. All bonds to be hereafter issued as aforesaid shall be in the same form and of the same date and payable in the same manner as the bonds to be now issued except that the Trustees Certificates thereon shall bear the date when actually certified by the Trustee and said bonds shall have all coupons of earlier date cut off so as to bear interest only from the date when certified and they shall all be consecutively numbered from the last number issued onwards and all such bonds when certified by the Trustee shall be in all respects equally secured by these presents with the bonds to be now issued.

Article 30. And whereas by reason of distance lapse of time or other accident the date and actual execution of these presents by the various parties hereto has been delayed and such execution may be previous or subsequent to the day of which it bears date now it is hereby expressly declared that these presents shall take effect as from the 2nd day of April 1883 and shall be valid and effectual as if dated and executed on that day and that these presents are the indenture of mortgage referred to in the bonds hereinbefore mentioned the form whereof is hereinbefore set forth and is made and executed by and between the parties hereto as and for the indenture of mortgage and trust securing and intended to secure said bonds as in said bonds is mentioned and recited.

In witness whereof the Oregon and California Railroad Company and the Farmers Loan and Trust Com-

pany pursuant to resolution of their respective Board of Directors duly authorizing the same have caused these presents and nineteen duplicates hereof to be sealed with their respective corporate seals, signed by their respective presidents and attested by their respective secretaries or assistant secretaries and the said parties of the third part respectively have hereunto and unto the said nineteen duplicates hereof set their hands and seals the day and year above written.

THE OREGON AND CALIFORNIA RAIL-
ROAD COMPANY,

By H Villard President

(Corporate Seal)

Attest H H Tyndale Assistant Secretary.

THE FARMERS LOAN AND TRUST COM-
PANY

By R G Rolston President.

(Corp. Seal) Attest Wm H Leupp Secretary.

| | |
|---------------|-------------------------------------|
| R D Pebbles |) as trustee under the said Deed of |
| G H Hopkinson |) Trust of June second 1881 |
| P Buchan |) |

Signed, sealed and delivered by said Oregon and California Railroad Company in Presence of:

Geo H Saxer

C A Stafford

Signed, sealed and delivered by said Farmers Loan
and Trust Company in presence of

C R Leake

George W Romain.

Signed, sealed and delivered by **George Henry Hop-**
kinson and Patrick Buchan

In the presence of

Edward Jno Pringuer.

17 Gresham House E C

F W Myers

U S Consulate General

London

Signed, sealed and delivered by **Robert Davie Peeble**
in the presence of

Geo A Saxer

Edwd. H Argent.

State of New York)
City and County of New York) ss.

Be it remembered That on this thirteenth day of August A D 1883 before me Louis M Fulton a commissioner of the State of Oregon and for the State of New York residing in said City of New York personally appeared Henry Villard the President of the Oregon and California Railroad Company and Hector H Tyn- dale the Assistant Secretary of the Same Company to me respectively personally known to be such who being

In witness whereof I have hereunto set my hand and affixed my official seal this 13th day of August A D 1883.

LOUIS M FULTON

A Commissioner for Oregon in New York.

State of New York)
City and County of New York) ss.

Be it remembered that on this thirteenth day of August A D 1883 before me Louis M Fulton a commissioner of the State of Oregon in and for the State of

New York residing in said City of New York personally appeared Roswell G Rolston the President of the Farmers Loan and Trust Company and William H Leupp the Secretary of the same Company to me respectively personally known to be such who being by me severally duly sworn did depose and say that he said Roswell G Rolston resides in the city and State of New York that he, said William H Leupp also Resides in said City of New York, that he said Roswell G Rolston is the President and he said William H Leupp is the Secretary of said Company; that they know the corporate seal of said Company that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said Company and that they the said Roswell G Rolston and William H Leupp signed their names thereto by the like order as President and Secretary of said Company respectively and they further acknowledged the execution of the within instrument to be their free and voluntary act and deed and as the free and voluntary act and deed of said Company for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this 13th day of August A D 1883.

(Comm Seal)

LOUIS M FULTON

A Commission for Oregon in New York.

Consulate General of the United States of America
for Great Britain and Ireland. London.)

On this the sixth day of September 1883 before me Lebbons H Mitchell Vice and Deputy Consul General and ex-officio a Notary Public of the United State of America at London England personally appeared George Henry Hopkinson and Patrick Buchan to me known to be respectively the persons of those respective names described in and who have executed the foregoing deed of Mortgage and Trust and then and there respectively acknowledged the same to be their free and voluntary act and deed for the uses and purposes therein contained.

In testimony whereof I have hereunto set my hand and affixed my official notarial seal at Londin aforesaid the day and year above written.

(U S C G Seal)

L H MITCHELL

Vice and Deputy Consul General U S A London.

State of New York)
) ss.
 City and County of New York)

Be it remembered that on this twenty fifth day of October 1883 before me Louis M Fulton a commissioner of the State of Oregon in and for the State of New York residing in said City of New York personally appeared Robert Davie Peebles to me known to be the person of that named described in and who executed the foregoing deed of Mortgage and Trust and then and there acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein mentioned.

LOUIS M FULTON

No. 9554

STATE OF OREGON,)
) ss.
County of Multnomah)

(Seal) JOHN B. COFFEY, County Clerk.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 399

is a certified copy of a trust deed executed by the Oregon and California Railroad Company to Milton S. Latham, Faxon D. Atherton and William Norris, April 15, 1870, recorded on page 727 of Deed Book "K" of the Records of Deeds of Multnomah County, Oregon, on April 18, 1870 and about the same time thereafter recorded in the Records of Deeds of all other counties in Oregon in which any part of said granted lands were situated, which exhibit is as follows:

THIS INDENTURE, Made and entered into at the City of Portland, Multnomah County, and State of Oregon, this fifteenth day of April, in the year of our Lord One Thousand Eight Hundred and Seventy, between the Oregon and California Railroad Company, a body corporate, organized at Portland, in the State of Oregon, on the Seventeenth day of March, in the year of our Lord One Thousand Eight Hundred and Seventy under an act of the Legislature of the State of Oregon approved October Fourteenth, A. D. One Thousand Eight Hundred and Sixty-two, entitled "An Act providing for private incorporations and the appropriation of private property therefor," and Acts amendatory thereof and supplemental thereto, party of the first part and Milton S. Latham, Faxon D. Atherton, and William Norris, all of city and county of San Francisco, State of California, parties of the second part, WITNESSETH:

WHEREAS, The Congress of the United States

of America did, by an Act approved July Twenty-fifth in the year of our Lord, One Thousand Eight Hundred and Sixty-six, and entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Central Pacific Railroad in California, to Portland in Oregon," and by Acts supplemental thereto, and amendatory thereof, grant certain lands to, and confer certain benefits upon such Oregon Company, as should be designated by the Legislature of the State of Oregon;

And WHEREAS, in pursuance of such Act of Congress, the Legislature of the State of Oregon, did on the twentieth day of October in the year of our Lord, One Thousand Eight Hundred and Sixty-eight, by joint resolution thereof, duly designated the Oregon Central Railroad Company, a corporation, incorporated at Salem in the State of Oregon, April twenty-second in the year of our Lord, One Thousand Eight Hundred and Sixty-seven, as the Company to take and manage the lands and franchises so granted to such Oregon Company by the Acts of Congress aforesaid, which Oregon Central Railroad Company did afterwards, and within the time required by such Acts of Congress duly file its assent to the said Acts and all the provisions thereof as required by the same in the office of the Secretary of the Interior of the United States at Washington City, and did locate the line of its railroad and prepare and file its map in strict accordance with all the provisions of such Acts and did further, prior to De-

cember twenty-fifth, in the year of our Lord One Thousand Eight Hundred and Sixty-nine, complete over twenty miles of its railroad and telegraph line and did fully equip the same in all respects as required by such Acts of Congress, and the said twenty miles of railroad and telegraph line were accepted by the government of the United States as in such Acts provided and the lands to which such company became entitled by virtue of a full and complete compliance with all the provisions of such Acts, and by the completion and equipment of such twenty miles of railroad were by the Secretary of the Interior withdrawn from market and ordered segregated from the public domain for the use and benefit of such Oregon Railroad Company, as in and by such Acts of Congress provided; And

WHEREAS, The said Oregon Central Railroad Company did on the twentyninth day of March, A. D. one Thousand Eight Hundred and Seventy, by a deed of conveyance duly and legally made, executed, acknowledged and delivered, bargain, sell, assign, set-over; *enfoeff*, convey and confirm unto the Oregon and California Railroad Company, party of the first part herein, all its right, title, interest, claim, property and demand whatsoever, both legal and equitable, present and prospective, absolute and contingent of, in and to the land, franchises and benefits whatsoever, granted or intended to be granted by said Acts of Congress upon such Oregon Company, and all right, title, interest, claim, property and demand whatsoever of the said Oregon Central

Railroad Company in such lands and franchise, and WHEREAS, The said Oregon and California Railroad Company did by a resolution of its Board of Directors at a meeting of such Board, duly called and legally held at the office of such Company in the City of Portland on the thirteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy, authorize the issue by such Company, in its name and under its corporate seal of Eighteen Thousand Four Hundred and Fifty Bonds, numbered respectively from number One to number Eighteen Thousand Four Hundred and Fifty. That is to say, Seven Thousand Four Hundred and Fifty Bonds of the denomination of One Thousand Dollars each, and numbered respectively from number One to number Seven Thousand Four Hundred and Fifty, both inclusive; Six Thousand Bonds of the denomination of Five Hundred Dollars each, and numbered respectively from number Seven Thousand Four Hundred and Fifty-one to number Thirteen Thousand Four Hundred and Fifty both inclusive, and Five Thousand Bonds of denomination of One Hundred Dollars each, and numbered respectively from number Thirteen Thousand Four Hundred and Fifty-one to number Eighteen Thousand Four Hundred and Fifty, both inclusive; such Bonds amounting in sum total to Ten Million Nine Hundred and Fifty Thousand Dollars. That all such Bonds should bear date April Fifteenth, A. D. One Thousand Eight Hundred and Seventy, and should be payable in the City of New York on the first day of April, in the year

of our Lord, One Thousand Eight Hundred and Ninety, in the gold coin of the United States, and should bear interest at the rate of seven per centum per annum, payable semi-annually in like gold coin of the United States at the Banking House of Messrs. Dabney Morgan Company, in the City of New York, which should be represented by half yearly interest coupons attached to each Bond, and should be payable on the first days of April and October of each year, and

WHEREAS, such Board of Directors did at their meeting aforesaid, by resolution duly passed, direct that all such Bonds should be delivered to Milton S. Latham and Faxon D. Atherton, two of the parties of the second part herein as trustees for the owners and holders thereof, and of such persons as should at any time hereafter become the owners and holders thereof, and did further resolve, that a mortgage should be duly executed by the party of the first part hereto, under its corporate seal and in its name and delivered to said Milton S. Latham and Faxon D. Atherton, two of the parties of the second part hereto, as a security for the payment of all such Bonds, both principal and interest, which Mortgage should cover and include the railroad and all other corporate property, real personal and mixed, of the parties of the first part hereto, save and except the lands, franchises and benefits granted or intended to be granted by the Acts of Congress aforesaid to the Oregon Company, and which were then owned by the party of the first part hereto, or in which

franchises and benefits were to be especially excepted such Company had any interest, and all which lands from such mortgage, and

WHEREAS, The Board of Directors of the party of the first part hereto, did, at their meeting aforesaid further resolve, in substance and legal effect that in order to further provide for the security and payment of the principal of the Eighteen Thousand Four Hundred and Fifty Bonds aforesaid, so directed to be issued by the party of the first part, and for the purpose of creating a sinking fund for the redemption of the principal of such bond at their maturity, the party of the first part hereto, should by its president and secretary, and in its name and under its corporate seal, duly make, execute, acknowledge and deliver to Milton S. Latham, Faxon D. Atherton and *William* Norris, parties of the second part thereto, a deed of conveyance of all the lands and franchises granted or intended to be granted to the Oregon Company by the said Act of Congress, approved July Twenty-fifth, in the year of our Lord, One Thousand Eight Hundred and Sixty-six, and entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon," and Acts supplemental thereto and amendatory thereof; which conveyance should be in trust for the benefit of the Bondholders of the party of the first part hereto, as aforesaid; and for the purpose of creating from the proceeds thereof a sinking fund for the redemption of said Eight-

een Thousand Four Hundred and Fifty Bonds as aforesaid; that such lands and franchises should not be sold or disposed of by such trustees without the consent of the party of the first part hereto, nor except in the manner and upon such terms as the party of the first part might direct, and that all the proceeds thereof should be invested by such trustees, party of the second part hereto, in United States Securities, or such other securities as the party of the first part hereto might consent to, and that such deed of trust should contain all the provisions, conditions and covenants hereafter contained, and all stipulations, agreements, covenants and conditions which the president and secretary of the party of the first part hereto might deem material, necessary or proper, for the mutual protection of the interest of the party of the first part hereto, and its Bondholders, and

WHEREAS, the said mortgage so directed to be issued, has been duly executed and acknowledged, and prepared for record in strict accordance with all the requirements of the resolutions of the Board of Directors of the party of the first part hereto, as aforesaid:

THEREFORE, THIS INDENTURE WITNESSETH:—In consideration of the premises aforesaid, that the Oregon and California Railroad Company, party of the first part hereto, and the further consideration of One Dollar, the receipt whereof is acknowledged, hath granted, bargained, sold, assigned, aliened, set-

over, enfeoffed, conveyed and confirmed and by these presents it does grant, bargain, sell, assign, alien. set-over, enfeoff, convey and confirm unto said Milton S. Latham, Faxon D. Atherton, and *William* Norris, parties of the second part hereto, all the lands and franchises, with their appurtenances lying and being in the State of Oregon, granted or intended to be granted to the Oregon Company by Act of Congress approved July Twenty-fifth, A. D. One Thousand Eight Hundred and Sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon," and Acts supplemental thereto and amendatory thereof. And also, all the right, title, interest, claim, property and demand whatsoever both legal and equitable, present and prospective, absolute and contingent, which the party of the first part hereto now has or owns, or to which it is in anywise entitled, in and to any and all lands and franchises in the State of Oregon, granted or intended to be granted to the Oregon Company by the Acts of Congress aforesaid, and also all future right, title, interest, claim. property and demand, which the party of the first part hereto may at any time hereafter have, own or acquire to any lands lying and being anywhere in the State of Oregon, or in any County thereof, by virtue of any further compliance with the requirements of such acts of Congress by the party of the first part hereto. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said granted lands, property and franchises, and every part and parcel thereof unto said Milton S. Latham, Faxon D. Atherton and *William* Norris parties of the second part thereto, and to their successors or successor and assigns forever. In trust, nevertheless, for the following uses and purposes, and upon the following conditions and covenants, and, for the mutual interests of the party of the first part hereto, and the holders of said Eighteen Thousand Four Hundred and Fifty Bonds so directed to be issued by the party of the first part hereto, as aforesaid, and two thousand of which Bonds of denomination of One Thousand Dollars each have already been issued, and other large amounts thereof are now about to be issued, That is to say: The said parties of the second part hereto, shall have and hold the whole of the lands and franchises so granted, or intended to be granted by said Acts of Congress to said Oregon Company, and herein conveyed, and intended to be conveyed by the party of the first part hereto in trust, for the benefit of the holders of said Eighteen Thousand Four Hundred and Fifty Bonds, and for the sole and exclusive purpose of creating from the proceeds thereof, when sold as hereinafter stated, a sinking fund for the redemption of such Bonds at their maturity; and for such purpose, the said parties of the second part hereto or their successors or successor may, by and with the consent of the party of the first part hereto, but not otherwise, at any time before the maturing of the principal of such Bonds, sell and dis-

pose of all or any part or portion of the lands and franchises so granted as aforesaid, by such Acts of Congress, and herein conveyed to such person or persons, firm or firms, associations or bodies corporate, and for such price and upon such terms as the party of the first part herein may, by and through its President advise or agree to; and the proceeds of all such lands and franchises or right to such lands shall, after deducting from such gross receipts all charges, costs and expenses, legitimately or necessarily incurred in making such disposition and sale, shall from time to time as realized, be received by such trustees, parties of the second part hereto, and shall be by them, their successors or successor, from time to time, as the same are received, invested in the United States securities, unless the President of the party of the first part hereto shall direct that such proceeds shall be invested in other securities, in which event the same shall be invested in such securities, as such President of the party of the first part hereto may designate, which securities, whether the same be United States, or other securities shall create a sinking fund and as such fund, shall be held, managed and controlled by and with the advice and under the direction of the President of the party of the first part hereto by said trustees, parties of the second part hereto, for the reduction and payment of the principal of the said Eighteen Thousand Four Hundred and Fifty Bonds of the party of the first part hereto at the maturity thereof, but no part of such fund, either principal or interest, shall ever at any time without the written consent of

the party of the first part hereto be used or applied in the payment of any interest on such Bonds, or in any other way or manner diverted, but the same shall be held and husbanded by such Trustees in accordance with the directions of the President of the party of the first part hereto, and in such manner as shall be most likely to increase the volume of such fund and advance the mutual interests of the party of the first part hereto and its Bondholders aforesaid: And in the event that the principal of such Bonds is not otherwise paid at the maturity thereof, than the fund aforesaid, which shall have been accrued from the proceeds of the sales of said lands and interest thereon, shall be, by such Trustees, parties of the second part their successors or successor, applied to the discharge and payment of any and all amounts, both principal and interest then remaining due and unpaid on all such Bonds and in the event that such fund shall then be insufficient to discharge the whole amount then due on all such Bonds, then the same shall be applied thereon rateably according to the interest respectively of all such Bondholders, And, it is further stipulated and agreed between the parties hereto, that in the event that there remains any deficiency in the payment of the principal and interest due on said Eighteen Thousand Four Hundred and Fifty Bonds after the whole of such fund aforesaid shall be applied thereon at the maturity thereof, then the trustees, parties of the second part hereto, their successors or successor shall have full power and authority to sell and convey any and all lands then remaining undisposed of, which are

included in the grant made by the Acts of Congress aforesaid and which are hereby conveyed and intended to be conveyed, which lands may be sold in whole or in part, as the trustees aforesaid may deem for the best interest of said Bond holders, but the same shall only be sold at Public Auction in the City of Portland, in the State of Oregon, to the highest bidder, and no such sale shall be made unless notice of the time and place thereof shall first be given *by* publication for at least six weeks in a weekly newspaper of general circulation published in the City of Portland, in the State of Oregon, and the proceeds of such sale or sales shall be applied in like manner to the payment of any balance, either principal or interest then remaining unpaid of such Bonds aforesaid, or any of them. And upon the full payment and redemption of said Eighteen Thousand Four Hundred and Fifty Bonds, principal and interest, whether before or after maturity the trustees aforesaid, parties of the second part hereto, their successors or successor shall re-convey by good and sufficient Deed of Conveyance to the said Oregon and California Railroad Company, party of the first part hereto, its successors or successor or assigns, all its right, title, interest, property and claim whatsoever which the said trustees, party of the second part hereto, their successors or successor may then have of, in or to any of the lands or franchises hereby granted and conveyed to the said parties of the second part hereto, and shall also assign, set over, transfer and deliver to the said party of the first part hereto, its successors or assigns, any and all moneys,

bonds, notes, or other securities then remaining in such sinking fund and held by such Trustees for the use and purposes aforesaid, all of which re-conveyances and transfers shall be made without any other or further consideration than the redemption of all such Bonds as aforesaid, by the party of the first part hereto, its successors or assigns. And it is mutually agreed by and between the parties hereto that the said Trustees, or either, or any of them, or the survivor of them, or any successor, or successors in such office may resign or discharge themselves, or himself of the Trust created, or declared by these presents by notice in writing to the said Company three months before such resignation shall take effect, or such shorter time as they may accept as adequate. And it is further hereby agreed between the parties to this Indenture, that in the mean time, until the said lands hereby granted and conveyed are sold by such Trustees as hereinbefore provided for, it shall be lawful for the party of the first part hereto, and its successors, peaceably and quietly to have, hold, use, possess and enjoy the said lands with the appurtenances, and to receive the incomes, rents, issues and profits thereof, to its own use and benefit, without any hindrance or interruption, suit or disturbance whatsoever of, or by, the said parties of the second part or their or his successor, or successors, in the Trust, or in any other person whatever claiming, or to claim, the same by, from, or under them, or any of them; and the said party of the first part, its successors and all and every other person or persons whomsoever lawfully or equitably claiming any

estate, right, title or interest of, in and to the hereinbefore granted premises, by, from or under, or in trust, for it shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said parties of the second part, or the survivor of them, or their or his successor or successors or assigns make, do and execute, or cause to be made, done and executed, all and every such further and lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises, lands and franchises hereby intended to be granted in and to the said parties of the second part, as by the said parties of the second part, or the survivor of them, their or his successor or successors, or the Counsel learned in the law, shall be reasonably devised, advised or required, And Also, that the said party of the first part and its successors, the above granted, bargained, sold and assigned premises, and every part and parcel thereof with the appurtenances thereof unto the said parties of the second part or the survivor of them, their or his successor or successors, against the said party of the first part and its successors, and against all and every person and persons whomsoever lawfully claiming or to claim the same by, through or under it shall and will Warrant, and by these presents forever Defend.

IN WITNESS WHEREOF, the said party of the first has caused its Corporate Seal to be affixed to these presents and the same to be signed by its Presi-

Ben Holladay,

(SEAL)

Secretary of the Oregon and California
Railroad Company

In Presence of
J. H. Mitchell,
Geo. E. Cole.

STATE OF OREGON,)
) ss.
County of Multnomah.)

BE IT REMEMBERED, that on this Eighteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy, before me, the undersigned, a Notary Public in and for said County of Multnomah and State of Oregon, duly commissioned, sworn and fully qualified, personally appeared the above named Ben Holladay, President of the Oregon and California Railroad Company, (and A. G. Cunningham, Secretary of the Oregon and California Railroad Company), whose names are subscribed to the foregoing instrument as parties thereto, personally known to me to be the individuals described in and who

executed the said instrument, and the severally acknowledged to me that he, the said Ben Holladay, as President of the said Oregon and California Railroad Company, and he, the said A. G. Cunningham, as Secretary of the said Oregon and California Railroad Company, executed the same as and for the Act and Deed of the said Oregon and California Railroad Company, freely and voluntarily and for the uses and purposes therein mentioned, and the said A. G. Cunningham being by me duly sworn did depose and say, that he is the Secretary of the Oregon and California Railroad Company and resides at the City of Portland, Multnomah County, in the State of Oregon; that he is the legal custodian of and is acquainted with the Corporate Seal of said Company; that the seal affixed to the within Trust Deed is such corporate seal, that the same was affixed by him as Secretary of said Company, on the Eighteenth day of April, A. D. One Thousand Eight Hundred and Seventy, by order of the Board of Directors of said Company and that he signed his name as Secretary to said Trust Deed by the like order of said Board of Directors.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Notarial Seal the day and year first above writetn.

(NOTARIAL SEAL)

Geo. W. Murray,

Notary Public.

(U. S. Rev. Stamps, 5 cents, Cancelled.)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Deed, Oregon and California Railroad Co. to Milton S. Latham, et al, recorded in Book "K" page 727 Record of Deeds, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Deed as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 5th day of May A. D. 1913.

(Seal)

Jno. B. Coffey, County Clerk

Filed May 10, 1913.

A. M. CANNON,

Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 400

is a certified copy of an instrument of date March 28, 1871, between Milton S. Latham, Faxon D. Atherton and William Norris, trustees, parties of the first part, and The European and Oregon Land Company, party of the second part, and the Oregon and California Railroad Company, party of the third part, recorded at page 223, Book "N", of the Records of Deeds of Multnomah county, Oregon, and thereafter, about the same time, recorded in the Records of Deeds of the various counties of the State within which any portion of the granted lands were situated, which exhibit is as follows: Book N, Page 223.

O. & C. R. R. Co., TO

EUROPEAN AND OREGON LAND CO.

THIS INDENTURE made and entered into at the City and County of San Francisco, State of California, this twenty-eighth day of March in the year of our Lord One Thousand Eight Hundred and Seventy-one between Milton S. Latham, Faxon D. Atherton

and *William Norris*, trustees, all of the City and County of San Francisco, parties of the first part, The European and Oregon Land Company, an incorporation, duly incorporated and organized under and pursuant to an act of the Legislature of the State of California approved the fourteenth day of April, One Thousand Eight Hundred and Fifty-three, entitled "An Act to provide for the formation of Corporations for certain purposes" and the acts supplementary thereto and amendatory thereof, party of the second part and the Oregon and California Rail Road Company a body corporate, organized at Portland in the State of Oregon, on the Seventeenth day of March, One Thousand Eight Hundred and Seventy, under an act of the legislature of the State of Oregon approved the fourteenth day of October One Thousand Eight Hundred and Sixty-two, entitled "An act providing for private corporations and the appropriation of private property therefor," and acts amendatory thereof and supplemental thereto, party of the third part Witnesseth:

WHEREAS, the said Oregon and California Railroad Company did on the fifteenth day of April in the year of Our Lord, One Thousand Eight Hundred and Seventy, duly make execute and deliver unto the said Milton S. Latham, Faxon D. Atherton and *William Norris*, its certain Indenture in writing under seal, bearing date on the last named day whereby the said Oregon and California Railroad Company as party of the first part therein, in consideration of certain premises in

said Indenture declared and expressed and in further consideration of One Dollar, the receipt whereof was therein acknowledged did duly grant, bargain, sell, assign, alien, set over, enfeof, convey and confirm unto the said Wilton S. Latham, Faxon D. Atherton and *William* Norris parties of the second part therein, all and singular the lands and franchises with their appurtenances lying and being in the State of Oregon granted or intended to be granted to the Oregon Company by act of Congress approved the twenty-fifth day of July, in the year One Thousand Eight Hundred and Sixty-six, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad in California to Portland in Oregon," and acts supplemental thereto and amendatory thereof and also all the right, title, interest, claim, property and demand whatsoever, both legal and equitable present and prospective, absolute and contingent which the said Oregon and California Railroad Company then had or owned or to which it was in anywise entitled in and to any and all lands and franchises in the State of Oregon, granted or intended to be granted to the Oregon Company by the acts of Congress aforesaid, and also all further right, title, interest, claim, property and demand which the said Oregon and California Railroad Company might at any time thereafter have, own or acquire to any lands lying and being anywhere in the State of Oregon or in any County thereof, by virtue of any further compliance with the requirements of such acts of Congress by the said Oregon and

California Railroad Company. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said granted lands property and franchises and every part and parcel thereof unto the said Milton S. Latham, Faxon D. Atherton and *William* Norris and to their successors or successor and assigns forever: In trust, nevertheless for certain uses and purposes and upon certain conditions and covenants in said Indenture contained as by said Indenture or the record thereof in the Recorder of Deeds in and for the County of Multnomah in the State of Oregon on pp 727 to 734 inclusive of Book K of said Records, reference thereto being had may more fully and at large appear. And Whereas among other conditions covenants and agreements in said Indenture contained and set forth, the said Milton S. Latham, Faxon D. Atherton and *William* Norris or their successors or successor and assigns by and with the consent of said Oregon and California Railroad Company, but not otherwise, were and are duly authorized, empowered and directed at any time before the maturing of the principal of certain bonds of the said Oregon and California Railroad Company in said Indenture mentioned and described to sell and dispose of all or any part or portion of the lands and franchises so granted as aforesaid, by such acts of Congress and in and by said Indenture conveyed to said trustees to such person or persons, firm or firms association or bodies corporate and for such price and upon such terms as the said Oregon and

California Railroad Company might by and through its President advise direct, instruct or agree to.

NOW THEREFORE, This Indenture Witnesseth: That the said Milton S. Latham Faxon D. Atherton and William Norris, Trustees, as aforesaid under and pursuant to the power and authority in them vested in and by the said Indenture first herein above referred to and in consideration of the premises and of the certain covenants and agreements hereinafter contained and set forth and to be performed and kept by the said European and Oregon Land Company and in consideration of the sum of one Dollar lawful money of the United States to them in hand paid by the said European and Oregon Land Company, the receipt whereof is hereby acknowledged and also in pursuance of the advice, direction, instruction and agreement in writing to that effect of the said Oregon and California Railroad Company, party of the third part by and through its president have granted, bargained, sold, assigned, aliened, set over, enfeoffed, conveyed and confirmed and by these presents do grant, bargain, sell, assign, alien, set over enfeoff convey and confirm unto the said European and Oregon Land Company party of the second part hereto; All the lands and franchises with their appurtenances lying and being in the State of Oregon granted or intended to be granted to the said Oregon Company by Act of Congress approved the twenty-fifth day of July One Thousand Eight Hundred and Sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Cen-

tral Pacific Railroad in California to Portland in Oregon," and acts supplemental thereto and amendatory thereof and also all the right title, interest, claim, property and demand whatsoever, both legal and equitable present and prospective, absolute and contingent which the parties of the first part hereto now have or hold or to which they may be in anywise entitled in and to any and all lands and franchises in the State of Oregon granted or intended to be granted to the said Oregon Company by the Acts of Congress aforesaid and also all future right, title, interest, claim, property and demand which the parties of the first part hereto may at any time hereafter have, own or acquire to any lands lying and being anywhere in the State of Oregon or in any County thereof by virtue of any further compliance with the requirements of such Acts of Congress by the party of the third part hereto, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise belonging and being the same land, tenements, franchises, hereditaments and appurtenances granted, conveyed and assured unto the parties of the first part hereto by the Oregon and California Railroad Company by Indenture bearing date the fifteenth day of April One Thousand Eight Hundred and Seventy, as by said Indenture or the record thereof in the records and deeds in and for the County of Multnomah in the State of Oregon on pp 727 to 734 inclusive of Book K of said records, reference being thereunto had, may more fully and at large appear.

TO HAVE AND TO HOLD the said granted

lands, property and franchises and every part and parcel thereof unto the said European and Oregon Land Company party of the second part hereto and to its successors and assigns forever, subject, nevertheless, to the certain provisions and conditions in reference to delivery of possession of said lands and delivery of the surveys, plats and patents and other muniments of title to or effecting said lands to be hereafter issued by the United States to the said Oregon and California Railroad Company pursuant to law which are hereinafter mentioned and expressed And said parties of the first part and all and every person or persons whomsoever lawfully or equitably claiming any estate, right, title or interest of in and to the hereinbefore granted premises by, from or under them and each of them shall and will at any time or times hereafter upon the reasonable requests and at the proper costs and charges in the law of the said party of the second part or its successor or successors or assigns make, do and execute or cause to be made, done and executed all and every such further and lawful and reasonable acts conveyances and assurances in the law for the better and more effectually vesting and confirming the premises, lands and franchises hereby intended to be granted in and to the said party of the second part as by the said party of the second part or its successor or successors or the counsel learned in the law shall be reasonably devised, advised or required. And also that the said parties of the first part the above granted, bargained, sold and assigned premises and every part and parcel thereof with the

appurtenances thereof unto the said party of the second part, or its successor or successors and assigns, against the said parties of the first part and their successors and against all and every person and persons whomsoever lawfully claiming or to claim the same by, through or under them it shall and will warrant and by these presents forever defend. And in consideration of the premises, the said European and Oregon Land Company, party of the second part hereto have covenanted, promised, and agreed and doth hereby covenant, promise and agree to and with the said Milton S. Latham, Faxon D. Atherton and *William* Norris, trustees, as aforesaid, in manner following that is to say: The said party of the second part hereto shall and will on or before the first day of April in the year of Our Lord, One Thousand Eight Hundred and Eighty-nine, pay to said Milton S. Latham, Faxon D. Atherton and William Norris, trustees as aforesaid, the price or sum of one and one quarter dollars lawful money of the United States for each and every acre of said lands and premises hereby conveyed to the party of the second part be the same more or less.

It is further covenanted and agreed by the said parties of the first part that they will notify in writing the party of the second part at San Francisco from time to time as they receive the same that they are prepared to deliver to the party of the second part the plats or surveys of the lands and premises hereby sold or intended to be sold as the same may be hereafter segregated from the public domain and set apart to the Oregon

and California Railroad Company party of the third part hereto, pursuant to law and for the purposes mentioned in the said Act of Congress passed as aforesaid on the twenty-fifth day of July, One Thousand Eight Hundred and Sixty-six and the acts supplemental thereto and amendatory thereof and all such papers, documents and muniments of title hereafter to come to their possession relating to said lands and premises as may be necessary to enable the party of the second part to sell at the *the* same by good and sufficient description thereof. And it is also further stipulated, covenanted and agreed by and between the parties of the first and second parts hereto, that the said parties of the first part having notified in writing as aforesaid, the party of the second part at San Francisco, California, that they are prepared to deliver to the party of the second part any of the said surveys, plats, patents and other evidences and muniments of title relating to or designating said lands as the same may from time to time be issued by the United States to said Oregon and California Railroad Company under the acts of Congress already passed or which may hereafter be passed in aid therefor supplemental thereto, the said party of the second part at any time before the expiration of two years from the day of the receipt by said party of the second part of the said notice relating to said documentary evidence of location of and title to said lands, may and shall receive actual possession of said patents and of the lands therein described upon paying to the parties of the first part the said price of one and one quarter dollars per

acre of such lands, but without interest on the said price of the same for the said period of ten years. If, however, such lands shall for any cause be not all paid for within ten years from the time the said party of the second part shall be notified by the parties of the first part as aforesaid, that said surveys, plats, patents and other evidences and muniments of title are ready to be delivered by the said parties of the first part to the said party of the second part as aforesaid, then the parties of the first part shall charge and the party of the second part shall pay interest at the rate of six per cent per annum upon said purchase price of one and one quarter dollars per acre of said lands for the period after said ten years and up to and including said first day of April, One Thousand Eight Hundred and Eighty-nine, during which said lands shall not be paid for by the party of the second part as hereinbefore, provided it being the intent of this stipulation and covenant that the party of the second part shall have ten years within which to make payment for and take possession of or sell to others the lands hereby conveyed without paying interest on the said purchase price of said lands for any portion or the whole of that time, but that after said lands or any part thereof shall have been at the disposition of the party of the second part under the covenants of this Indenture for the term of two years it shall thereafter pay to the parties of the first part, interest at the rate of six per cent per annum on the purchase price of all the lands so at the disposition of the party of the second part which may not

for any reason have been paid for by said party of the second part within such period of two years. But the said surveys, plats, patents and all other evidences and muniments of title from the United States to said Oregon and California Railroad Company relating to said lands hereinbefore conveyed shall remain with, and the possession of the lands and premises therein described shall always remain in the said parties of the first part anything hereinafter contained to the contrary notwithstanding, until said party of the second part shall pay the parties of the first part for the same or such part thereof as it may from time to time desire to obtain possession of under this conveyance, the said price of one and one quarter dollars per acre of said lands and such rate of interest thereon as is hereinbefore provided for. It is further expressly covenanted and agreed by and between the parties hereto, each with the other, that in case the total amount of indebtedness of the party of the second part created under this Indenture shall at the time of the execution and delivery of these presents or at any further time exceed the amount of the capital stock of said party of the second part actually paid in, the parties of the first part in consideration of the premises and of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged hereby covenant, promise and agree that they will and they do hereby remise release and discharge the trustee of the party of the second part under whose administration such excess may be or is hereby created, from all and every liability,

joint or several in this or either of their individual and private capacities to the parties of the first and their parts, for the amunt of such excess of said indebtedness over the amount of capital stock of the party of the second part actually paid in at the time of the execution and delivery of these presents and said parties of the first part for the consideration aforesaid, do hereby waive, surrender and abandon any and all claim, demand or right at law or in equity or existing or to exist by operation of the statute creating *undivied* and private liabilities of trustees of corporations organized under the laws of California, for debts or liabilities incurred in excess of the amount of capital stock actually paid in. And the said party of the third hath covenanted and agreed and doth hereby covenant and agree to and with the parties of the first part, and the party of the second part, that it has duly authorized, empowered, directed and required the said parties of the first part as trustees as aforesaid, to make, execute and deliver this Indenture to the said party of the second part in manner and form and upon the terms and conditions hereinbefore expressed; and the said party of the second part by and through its president, he being thereunto and for that purpose duly authorized and empowered this sale and conveyance and every part thereof hath fully and completely ratified, approved, confirmed and by these presents doth fully ratify, approve, and confirm the same.

IN WITNESS WHEREOF the said parties of

the first part have hereunto set their respective hands and seals: and the said party of the second part hath also caused these presents to be subscribed by its president and its corporate seal to be hereto affixed and attested by its Secretary by resolution of its Board of Trustees, the day and year first above written and the said party of the third part hath also caused the same to be subscribed by its President and its corporate seal to be hereto affixed and attested by its Secretary by resolution of its Board of Trustees the day and year first above written.

Milton S. Latham, (Seal)

Faxon D. Atherton, (Seal)

Wm. Norris. (Seal)

Signed, sealed and delivered

first being duly stamped.

Wm. H. S. Barnes,

F. J. Thibault.

THE EUROPEAN AND OREGON LAND COMPANY

(Seal of E and O

By Jos. S. Wilson.

Land Company)

Pres't

(Rev Stamps 50c cancelled)

Attest: Francis Avery,

Secretary, E and O. L. Co.

(SEAL OF O & C
R. R. COMPANY)

Attest: A. G. Cunningham,
Secretary, O and C. R. R. Co.

STATE OF CALIFORNIA,)
) ss.
City and County of San Francisco.)

I, F. J. Thibault, a commissioner for the State of Oregon, duly commissioned by the Executive authority and qualified under and by virtue of the laws thereof to take the acknowledgements and proof of the execution of deeds and other instruments in writing under seal to be used or recorded in the State of Oregon and to administer oaths affirmations & c, residing in the city and county of San Francisco and State of California do certify that on the twenty eighth day of March, A. D. 1871, before me personally appeared in the said city and county of San Francisco and State of California, Milton S. Latham, Faxon D. Atherton and *William* Norris whose names are subscribed to the foregoing instrument as parties thereto of the first part who are to me personally known to be the individuals described in and who executed the said instrument as parties of the first part therein and said Milton S. Latham, Faxon D. Atherton and William Norris, severally duly acknowledged to me that they executed the said annexed

instrument freely and voluntarily and for the uses and purposes therein mentioned and also that on the day and year aforesaid and at the place aforesaid, personally appeared Jos. S. Wilson, president of the European and Oregon Land Company and Francis Avery, the Secretary of the said Company, to me severally and personally known as the president and secretary of said Company and as the real persons by whom and in whose names as such president and Secretary the foregoing instrument was subscribed and executed and they severally acknowledged before me that they severally subscribed and executed the foregoing instrument for and in behalf of and as the act and deed of said European and Oreogn Land Company, party of the second part thereto for the uses and purposes therein expressed under express authority of resolutions of its Board of Directors duly passed and adopted and the said Jos. S. Wilson, president as aforesaid, and said Francis Avery, secretary as aforesaid, being by me duly and severally sworn, severally deposed as follows: that he knows the corporate seal of said Company and that the seal affixed to the foregoing instrument is the corporate seal of said Company and was so affixed by the express order and directions of its Board of Directors and under authority of resolutions duly passed and adopted by said Board and duly entered upon the minutes of its proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as such commis-

scribed and executed the foregoing instrument for and on behalf of and as the act and deed of said Oregon and California Railroad Company, party of the third part thereto for the uses and purposes therein expressed under express authority of resolutions of the Board of Directors of said Company, duly passed and adopted and the said Ben Holladay, president as aforesaid, and said A. G. Cunningham, secretary as aforesaid, being by me duly and severally sworn, severally deposed as follows: that he knows the Corporate seal of said Company and that the seal affixed to the foregoing instrument is the corporate seal of said Company and was so affixed by the express order and direction of the Board of Directors of said Company and under authority of resolutions duly passed and adopted by said Board and duly entered upon the minutes of its proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as such Notary at my office in the City of Portland, County of Multnomah and State of Oregon, this 1st day of April, in the year of Our Lord One Thousand Eight Hundred and Seventy-one.

(5 cent Rev stamp
cancelled)

Geo. E. Cole,
Notary Public.

(NOTARIAL SEAL)

STATE OF OREGON,)
) ss.
Department of State.)

I, S. F. Chadwick, secretary of the State of Oregon, do hereby certify that Geo. E. Cole, whose name is subscribed to the foregoing and annexed certificate of acknowledgement to Indenture was at the time of signing the same, to-wit: on 1st day of April, A. D. One Thousand Eight Hundred and Seventy-one a duly commissioned qualified and acting Notary Public in and for the County of Multnomah, in said State of Oregon, duly authorized and empowered to take and certify under his Notarial Seal acknowledgements of deeds of conveyance and Indentures and that full faith and credit are due to his official acts as such.

WITNESS MY HAND AND the Great Seal of
of State at office in the City of Salem, State of Oregon,
this third day of April, in the year of our Lord, One
Thousand Eight Hundred and Seventy-one.

S. E. Chadwick,

Secretary of the State of Oregon.

(GREAT SEAL OF THE
STATE OF OREGON)

Recd for Record, April 4th, 1871.

STATE OF OREGON,)
) ss.
 County of Multnomah,)

No. 9557

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Deed, O & C R. R. Co. to European and Oregon Land Co., recorded in Book N page 223 Record of Deeds, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Deed as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 3rd day of May A. D. 1913.

(Seal)

Jno. B. Coffey, County Clerk.

Filed May 10, 1913.

A. M. CANNON,
 Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 401

is a certified copy of an agreement executed July 25, 1874, by and between The European and Oregon Land Company, party of the first part, and Milton S. Latham, Faxon D. Atherton, William Norris, parties of the second part, Henry Villard and others, parties of the third part, the Oregon and California Railroad Company, party of the fourth part, and Ben Holladay,

party of the fifth part, recorded at page 264, Book "Z" of the Records of Deeds for Multnomah county, Oregon, on January 4, 1875, and thereafter, about the same time, recorded in the Records of Deeds of all other counties in which any part of said granted lands were situated, and which exhibit is as follows:

Deed Book Z, 264.

AGREEMENT, BETWEEN THE EUROPEAN
AND OREGON LAND COMPANY
AND
MILTON S. LATHAM, FAXON D. ATHER-
TON AND WM. NORRIS, TRUSTEES
AND OTHERS.

AN AGREEMENT, made and entered into this twenty-fifth day of July, Eighteen Hundred and Seventy-four, by and between The European and Oregon Land Company, a body politic and corporate under the laws of California, party of the first part; Milton S. Latham, Faxon D. Atherton and William Norris, all of the State of California, trustees, parties of the second part; Henry Villard, of the City of Heidelberg, Grand Duchy of Baden, Heinrich, Hohenemser of the City of Frankfort-on-the-main, Prussia, director of the Deutsche Vereins bank in the same city, Aron Niederhofheim, of the city of Frankfort-on-the-Main, Director of the branch office at Frankfort-on-the-Main of the Bank fuer Handel and Industrie at Darmstadt, Julius

Schmidt, banker of the city of Frankfort-on-the-Main, Adolph Otto, doctor of law and attorney at law of the City of Heilbronn, Kingdom of Wurtemberg, Michael Benjamin, of the City of Munich, Kingdom of Bavaria, director of the Baierische Wechsler bank in the same city, Carl Staehelin-Bucknor of the City of Basle, Switzerland, partner in the house of Messrs Iselin & Staehelin in the same city, F. S. Van Nierop of the city of Amsterdam, Kingdom of the Netherlands, director of the Amsterdam'sche Bank of the same city; Wilhelm Koester, of the city of Mannheim, Grand Duchy of Baden, banker, partner in the house of Koester & Co., in the same city by the said Henry Villard, their attorney in fact, parties of the third part; The Oregon & California Railroad Company, a body politic and corporate under the laws of Oregon, parties of the fourth part; and Ben Holladay, of the State of Oregon, (who is president of the last named Company, and the owner of a majority of its capital stock) party of the fifth part;

WITNESSETH: WHEREAS, the said party of the fourth part, heretofore, to-wit: on the fifteenth day of April, Eighteen Hundred and Seventy, made its certain Indenture of mortgage of that date of certain of its property therein described, to said Faxon D. Atherton and Milton S. Latham as trustees, to secure the payment of certain of its bonds, which mortgage was duly recorded in the office for the record of mortgages in the county of Multnomah, State of Oregon, in Book

K of Mortgages, on pages seven hundred and forty five and following, to which mortgage and the record thereof direct reference is made. And WHEREAS, at the date last aforesaid, said party of the fourth part for the purpose of creating a sinking fund for the payment of the said bonds conveyed by its certain deed of that date to the parties of the second part all the lands and franchises with their appurtenances lying and being in the State of Oregon, granted or intended to be granted, to the Oregon Company by Act of Congress, approved July twenty-fifth, A. D. One Thousand Eight Hundred and Sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the central Pacific Railroad in California to Portland in Oregon," and Acts supplemental thereto and amendatory thereof, and also, all the right, title, interest, claim, property and demand whatsoever, both legal and equitable, present and prospective, absolute and contingent, which the party of the first part hereto now has, or owns or to which it is in any way entitled in and to any and all lands and franchises in the State of Oregon granted, or intended to be granted to the Oregon Company by Acts of Congress aforesaid, and also all future right, title, interest, claim, property and demand, which the party of the first part hereto may at any time hereafter have, own or acquire to any lands lying and being anywhere in the State of Oregon, or in any county thereof, by virtue of any further compliance with the requirements of such Acts of Congress by the party of the first part hereto; together with all

and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, in trust nevertheless, for the uses and purposes specified in said deed of trust, which said deed was duly recorded in Book K of record of deeds of said last named county, on pages seven hundred and twenty seven and following, to which deed and the record thereof direct reference is made. And WHEREAS, said parties of the second part in part execution of their said trust, did on the twenty-eighth day of March, Eighteen Hundred and Seventy-one, made a certain deed and agreement of sale and conveyance with said party of the first part (which was mutually executed by said parties) conveying to said party of the first part the lands and property lastly above described, upon certain terms in said agreement of sale and conveyance described, which said deed is recorded in said county last named in Book N of Records of Deeds, Pg 223 of said county, to which deed and record, direct reference is heremade.

AND WHEREAS, said agreement last aforesaid remains only in part executed, and comparatively but a small portion of said lands have been sold by said parties of the first part; and the parties of the third part who are the owners and possessors of a majority of said bonds referred to in the above mentioned deeds of mortgage and trust, together with said party of the fourth part deem it to be for the interest of the said party of the fourth part as well as for the whole body of said bondholders, that said sale so far as may be should be canceled, and said land be reconveyed, upon equitable terms as herein provided.

AND WHEREAS, said party of the first part has spent large sums of money in causing plans written descriptions and maps of the land in said land grant to be made and circulated, and in advertising the said lands and in maintaining agencies for the sale thereof, and in other ways which will be of great benefits to all parties interested in the sale thereof. And WHEREAS, all parties hereto are interested in adjusting the matters aforesaid, and in securing to the bond-holders the fullest security to be obtained from the said lands so conveyed in trust to said parties of the second part, And WHEREAS, the parties hereto have agreed upon such cancellation and rescision of said agreement between said parties of the first and second part and a restoration of said parties to their respective original positions, so far as may be.

NOW THEREFORE, the party of the first part in consideration of the premises and the sum of one dollar to it in hand paid by said parties of the second part (the receipt whereof is hereby acknowledged) has remised, released, sold and assigned and by these presents does remise, release, sell, assign, convey and confirm (with certain exceptions hereinafter named) to said parties of the second part and their heirs, successors and assigns forever, all the land and franchises, with all rights and privileges, easements and appurtenances thereunto belonging, lying and being in the State of Oregon, granted or intended to be granted to the Oregon Company by Act of Congress, approved July twenty-five, Eighteen Hundred and Sixty-six, en-

titled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon, and Acts supplemental thereto, and amendatory thereof," and also (with certain exceptions hereinafter named) all the contracts, rights, title, interest, claim, property and demand, whatsoever, both legal and equitable, present and prospective, absolute and contingent, which the party of the first part heretofore had or owned, or to which it became in any way entitled under and by virtue of said deed from the party of the second part, dated March twenty-eight, A. D. Eighteen Hundred and Seventy-one, or of any other deeds or contracts; if such there be, or of any acts heretofore done by the party of the fourth part, in compliance with said acts of Congress to the lands and property named in said deed, and to all lands, rights, property and franchises in the State of Oregon, granted or intended to be granted to the Oregon Company by the Acts of Congress aforesaid; and also (with certain exceptions hereinafter stated) all future right, title, interest, claim, property and demand which the party of the first part may at any time hereafter have, own or acquire in, or to any lands, rights or property in the State of Oregon or any county thereof by virtue of any further compliance with the requirements of said Acts of Congress by the party of the fourth part, or its grantors; and also all maps, plans, office furniture, leases, contracts, bonds, notes, mortgages and other securities and property, real and personal, and all accounts, moneys, claims, demands,

rights and privileges, legal or equitable which the said party of the first part now had or owns or to which it is in any way entitled, saving and excepting, nevertheless, out of the premises, all money or property that the parties of the first part may procure, get or receive as indemnity and reimbursement as herein provided, and also expressly saving and excepting, nevertheless, out of the premises and from the operation of these presents, the corporate rights and franchise of the said party of the first part, and all lands and rights heretofore conveyed or granted by it, being the premises named in certain deeds as follows, to-wit.

Acres.

| | |
|--|--------|
| Lot number one (1) Section eleven (11) township two (2) south of range two (2) west, containing | 10.68 |
| Northwest quarter ($\frac{1}{4}$) of section seventeen (17) and northwest quarter ($\frac{1}{4}$) of southwest quarter ($\frac{1}{4}$) of section thirteen (13) township two (2) south range four (4) east containing | 200.00 |
| West half ($\frac{1}{2}$) of southwest quarter ($\frac{1}{4}$) and northeast quarter ($\frac{1}{4}$) of the northeast quarter ($\frac{1}{4}$) of section five (5) township two (2) south range four (4) west containing, | 119.48 |
| Lots one (1) and eight (8) of section nine (9) township two (2) south range one (1) east containing | 21.92 |

| | |
|--|--------|
| Lots one (1) and (2) of section nineteen (19) township two (2) south range four east, containing | 46.36 |
| Lots three (3) and eight (8) of section twenty seven (27) township thirteen (13) south range five (5) west, containing | 19.91 |
| Southwest quarter ($\frac{1}{4}$) of southeast quarter ($\frac{1}{4}$) and southeast quarter ($\frac{1}{4}$) of southwest quarter ($\frac{1}{4}$) of section eleven (11) township two (2) south range three (3) west, contain- ing | 80.00 |
| Lot number one (1) of northeast quarter ($\frac{1}{4}$) of section fifteen (15) township three (3) south range one (1) east, containing | 22.24 |
| Lot number two (2) of section thirty one (31) township three (3) south range four (4) east, containing | 28.60 |
| Northeast quarter ($\frac{1}{4}$) of section thirteen (13) and southeast quarter ($\frac{1}{4}$) of northeast quar- ter ($\frac{1}{4}$) of section thirty one (31) township three (3) South range two (2) east, contain- ing | 200.00 |
| Northeast quarter ($\frac{1}{4}$) of northeast quarter ($\frac{1}{4}$) of section seven (7) township three (3) south range one (1) west, containing | 40.00 |

Southeast quarter ($\frac{1}{4}$) of section nineteen and northwest quarter ($\frac{1}{4}$) of northeast quarter ($\frac{1}{4}$) and southeast quarter ($\frac{1}{4}$) of northwest quarter ($\frac{1}{4}$) of section twenty nine (29) township four (4) south range four (4) east, containing 240.00

Lot one (1) of section twenty seven (27) and lot one (1) of section twenty nine (29) township four (4) south range one (1) west, containing 5.69

Northeast quarter ($\frac{1}{4}$) of northwest quarter ($\frac{1}{4}$) of section three (3) township four (4) south range three (3) east, containing 40.20

Lot two (2) of section one (1) and southwest quarter ($\frac{1}{4}$) of northwest quarter ($\frac{1}{4}$) of section eleven (11) and lot six (6) of section fifteen (15) township four (4) south range five (5) west, containing 95.10

Southeast quarter ($\frac{1}{4}$) of northeast quarter ($\frac{1}{4}$) of section nineteen (19) township four (4) south range four (4) east, containing 40.00

Lot one (1) of section nine (9) and lot one (1) of section nineteen (19) and lots three (3) and four (4) of section twenty-five (25) township five (5) south range four (4) west, containing 26.73

- Lots three (3) and four (4) of section one (1) and southwest quarter $\frac{1}{4}$ of southeast quarter ($\frac{1}{4}$) of section nine (9) and lot two (2) of section twenty nine (29) township five (5) south range six (6) west, containing 96.14
- Lot two (2) of section seven (7) township six (6) south range five (5) west, containing 2.44
- Lot four (4) of section twenty three (23) township six (6) south range seven (7) west, containing 15.14
- Lot three (3) of section twenty nine (29) and lot two (2) of section seventeen (17) township thirteen (13) south range five (5) west, containing 26.20
- Lot eight (8) and northeast quarter ($\frac{1}{4}$) of the northeast quarter ($\frac{1}{4}$) of section twenty three (23) township fourteen (14) south range three (3) west, containing 43.69
- Lots one (1) and two (2) of section twenty nine (29) township two (2) south range one (1) east, containing 57.66
- Southeast quarter ($\frac{1}{4}$) of southeast quarter ($\frac{1}{4}$) of section five (5) township three (3) south range one (1) east, containing 40.00

vs. The United States 7887

Southwest quarter ($\frac{1}{4}$) of southwest quarter
and northwest quarter ($\frac{1}{4}$) of northwest quarter
($\frac{1}{4}$) of section one (1) township (3) south
range two (2) east, containing 78.52

Northwest quarter ($\frac{1}{4}$) of southeast quarter
($\frac{1}{4}$) of section thirteen (13) township two
(2) east, containing 40.00

Northeast quarter ($\frac{1}{4}$) of southeast quarter
($\frac{1}{4}$) of section thirteen (13) township two
(2) south range three (3) east, containing 40.00

Lot five (5) of section twenty five (25) township
two (2) south range three (3) east, containing 31.98

Lot three (3) of section five (5) township three
(3) south range three (3) east, containing 17.25

Lot two (2) of section thirteen (13) township
three (3) south range three (3) east, containing 21.56

Lot seven (7) of section thirteen (13) township
three (3) south range three (3) east, containing 47.29

Lot one (1) of section seventeen (17) township
three (3) south range three (3) east, containing 38.36

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|---|-------|
| Southwest quarter ($\frac{1}{4}$) of northwest quarter ($\frac{1}{4}$) of section seventeen (17) township three (3) south range three (3) east, containing | 40.00 |
| Northeast quarter ($\frac{1}{4}$) of northeast quarter ($\frac{1}{4}$) of section one (1) township four . . south range three (3) east, containing | 40.09 |
| Northwest quarter ($\frac{1}{4}$) of northeast quarter ($\frac{1}{4}$) of section one (1) township four (4) south range three (3) east, containing | 40.08 |
| North half ($\frac{1}{2}$) of southwest quarter ($\frac{1}{4}$) of of section seven (7) township one (1) south range four (4) east, containing | 80.15 |
| North half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section one (1) township three (3) south range four (4) east, containing | 80.00 |
| North half ($\frac{1}{2}$) of northwest quarter ($\frac{1}{4}$) of section (1) township three (3) south range four (4) east, containing | 82.75 |
| Southwest quarter ($\frac{1}{4}$) of northwest quarter ($\frac{1}{4}$) and northwest quarter ($\frac{1}{4}$) of southwest quarter ($\frac{1}{2}$) of section eleven (11) township three (3) south range four (4) east, containing | 80.00 |
| South half ($\frac{1}{2}$) of southeast quarter ($\frac{1}{4}$) of section thirty one (31) township one (1) south range one (1) west, containing | 80.00 |

| | |
|---|--------|
| <i>vs. The United States</i> | 7889 |
| South half ($\frac{1}{2}$) of northeast quarter ($\frac{1}{4}$) of section five (5) township two (2) south range one (1) west, containing | 80.00 |
| North half ($\frac{1}{2}$) of southeast quarter ($\frac{1}{4}$) of section thirteen (13) township two (2) south range one (1) west, containing | 80.00 |
| Southeast quarter ($\frac{1}{4}$) of southwest quarter ($\frac{1}{4}$) of section one (1) township three (3) south range one (1) west, containing | 40.00 |
| Southeast quarter ($\frac{1}{4}$) and south half ($\frac{1}{2}$) of northeast quarter ($\frac{1}{4}$) of section twenty five (25) township one (1) south range two (2) west, containing | 240.00 |
| Northwest quarter ($\frac{1}{4}$) of northeast quarter ($\frac{1}{4}$) and lots three (3) and four (4) of section twenty seven (27) township one (1) south range two (2) west, containing | 107.07 |
| Lot one (1) of section five (5) township two (2) south range two (2) west, containing | 13.00 |
| Southwest quarter ($\frac{1}{4}$) of northwest quarter ($\frac{1}{4}$) of section seven (7) township two (2) south range two (2) west, containing | 41.96 |
| Southeast quarter ($\frac{1}{4}$) of northwest quarter ($\frac{1}{4}$) of section seven (7) township two (2) south range two (2) west, containing | 40.00 |

| | |
|---|-------|
| Lots three (3) and four (4) of section nine (9) township two (2) south range two (2) west, containing | 19.60 |
| Northeast quarter ($\frac{1}{4}$) of northeast quarter ($\frac{1}{4}$) of section twenty three (23) township two (2) south range two (2) west, containing | 40.00 |
| West half ($\frac{1}{2}$) of southwest ($\frac{1}{4}$) of section one (1) township two (2) south range three (3) west, containing | 80.00 |
| Northeast quarter ($\frac{1}{4}$) of southeast quarter ($\frac{1}{4}$) of section three (3) township two (2) south range three (3) west, containing | 40.00 |
| Northwest quarter ($\frac{1}{4}$) of southwest quarter ($\frac{1}{4}$) of section eleven (11) township two (2) south range three (3) west, containing | 40.00 |
| Lot five (5) of section twenty one (21) town- ship two (2) south range three (3) west, con- taining | 30.86 |
| Northwest quarter ($\frac{1}{4}$) of southeast quarter ($\frac{1}{4}$) of section twenty three (23) township (2) south range three (3) west, containing | 40.00 |
| Lot two (2) of section eleven (11) township one (1) south range two (2) east, containing | 37.66 |
| Northeast quarter ($\frac{1}{4}$) of northeast quarter ($\frac{1}{4}$) of section fifteen (15) township one (1) south range two (2) east, containing | 40.00 |

| | |
|--|--------|
| Southwest quarter ($\frac{1}{4}$) of northeast quarter ($\frac{1}{4}$) of section five (5) township one (1) south range three (3) east, containing | 40.00 |
| Northwest quarter ($\frac{1}{4}$) and lot two (2) of section five (5) township one (1) south range three (3) east, containing | 165.92 |
| North half ($\frac{1}{2}$) of northeast quarter ($\frac{1}{4}$) of section seven (7) township one (1) south range three (3) east, containing | 80.00 |
| Lot six (6) of section thirteen (13) township three (3) south range three (3) east, containing | 28.80 |
| South half ($\frac{1}{2}$) of northwest quarter ($\frac{1}{4}$) of section one (1) township three (3) south range four (4) east, containing | 80.00 |
| Lots one (1) and two (2) of section three (3) township two (2) south range one (1) west, containing | 40.00 |
| Northwest quarter ($\frac{1}{4}$) of southeast quarter ($\frac{1}{4}$) and northeast quarter ($\frac{1}{4}$) of southwest quarter ($\frac{1}{4}$) of section seven (7) township two (2) south range one (1) west, containing | 80.00 |
| Lots six (6) and eight (8) of section seventeen (17) township one (1) south range two (2) west, containing | 38.50 |

Lots three (3) and four (4) of section thirty three (33) township one (1) south range two (2) west, containing 55.66

East half ($\frac{1}{2}$) of southeast quarter ($\frac{1}{4}$) of section eleven (11) township two (2) south range three (3) west, containing 80.00

Lot one (1) of section twenty five (25) township three (3) south range four (4) west, containing 6.96

Lot eight (8) of section three (3) township five (5) south range three (3) west, containing 10.78

But, as to all these excepted parcels, the party of the first part hereby grants and conveys all the remaining rights, title and interest therein, if any there be, legal or equitable. Meaning and intended hereby among other things, to reconvey to the party of the second part, everything whatsoever, excepting as aforesaid, heretofore conveyed or granted by said party of the second part to said party of the first part thereof, and fully to reinstate the party of the second part, so far as may be done, and with exceptions aforesaid in all the property, franchises, ownership, rights and privileges touching the premises which it had before the said deed was made by them to the party of the first part.

TO HAVE AND TO HOLD the granted premises unto the said party of the second part, and their

heirs, successors and assigns forever, but in trust nevertheless, for the same uses and purposes and upon the same conditions and covenants named in said deed of trust from the party of the fourth part to the party of the second part, dated April fifteenth, Eighteen Hundred and Seventy. And the parties of the second part hereby accept said conveyance and agree to hold the said land upon the trusts hereinbefore referred to. But this conveyance is made upon the express condition that the parties of the second part agree and they do hereby agree to and with the parties of the first part, to fulfil and perform all the contracts for sales or conveyancing of any of said lands heretofore made by said party of the first part with the purchaser and do further agree to reimburse the party of the first part or cause it to be reimbursed in full out of the net proceeds of lands coming into their hands for all outlays or disbursements in its said business; and do further agree to release and discharge the parties of the first part from the payment of any of the sums of money or the performance of any of the matters and things on its part to be made, done and performed as set forth in said conveyance and agreement of the said twenty-eighth day of March, Eighteen Hundred and Seventy one, and to release and indemnify the party of the first part or cause it to be indemnified when and to the extent that said parties of the second part may have in their hands any net proceeds from the sale of lands, from and against all contracts or liabilities which it may be under, relative to the granted premises, and in all

other matters for and against which said party of the first part equitably and in good conscience has a right to be reimbursed, indemnified and protected, such indemnity and repayment shall also be reduced to the extent that any one or more of the stockholders shall waive, or has waived his right to any share or interest therein, in favor of the bondholders; and all rights of parties within the said party of the first part, as among themselves, or in relation to the Company shall be adjusted as they and said Company may agree.

For the ascertaining of the payment and indemnity to be allowed by said party of the second part, to the party of the first part, it is agreed that on motion of either of the parties of the second or third parts, three arbitrators shall be appointed one to be chosen by each of said last named two parties, and the third by the two so chosen; and in case either party or arbitrator, as the case may be, having been fairly notified in writing for seven days, of the choice of the other party or arbitrator, as the case may be, shall fail to notify the other party or arbitrator, as the case may be, of his own choice, then the principal consular officer of the German Empire, at San Francisco, shall upon being notified of such failure, be authorized to fill the vacancy forthwith, and immediate notice shall be given of his action to both of said parties or arbitrators, as the case may be. The decision of the said three arbitrators, or in case of disagreement of a majority of them, shall be final; and said arbitators, in making their award, shall not be bound

by the strict rules of law or equity, as administered in Courts, but shall make a fair and equitable adjustment.

The party of the third part may, if it sees fit, and by consent of the arbitrators, cause any part of the personal property hereby conveyed, to be returned to the parties of the first part in lieu of, or in lieu of making compensation. And the said parties of the third part do hereby covenant and agree to and with said parties of the first part, in consideration of the premises and the sum of one dollar to them in hand paid by said party of the first part, the receipt whereof is hereby acknowledged, that they, the parties of the first part, will indemnify, save and keep harmless the said party of the first part of and from all loss and damage by reason of the execution of these presents by the party of the first part, and against any and all claims against said party of the first part, for the purchase money by them to have been paid unto and by virtue of said agreement between said parties of the first and second parts, dated the twenty eighth day of March, Eighteen Hundred and Seventy-one.

IN WITNESS WHEREOF, The said parties of the second, third and fifth parts have hereunto set their hands and seals, the parties of the second and fifth parts and said Henry Villard in person and the others of said attorney in parties of the third part by their said fact, Henry Villard; and the parties of the first and fourth parts, corporations as aforesaid, have caused these presents to be signed by their respective presidents

and secretaries, and their corporate seals respectively to be hereunto affixed, all in quadruplicate, the day and year first above written.

J. W. Ames,

President of the European and Oregon
Land Company

Pelham W. Ames,

Secretary of the European and Oregon
Land Company,

(Seal of the European & Oregon Land Co.)

In presence of:

F. J. Thibault,

John H. Winkins.

(This agreement shall not take effect as to the parties of the first and second parts until ratified by the constituents of the said Henry Villard.

J. W. Ames,

Pres E and O Land Co.

July 25th, 1874.)

| | | |
|-------------|--------------------------------------|--------|
| | (Milton S. Latham, | (Seal) |
| Trustees.— | (F. D. Atherton, | (Seal) |
| | (Wm. Norris, | (Seal) |
| (. | Henry Villard, | (Seal) |
| (| Heinrich Hohenemser, | (Seal) |
| (By | Henry Villard, his attorney in fact, | |
| (| Aron Neiderhofheim, | (Seal) |
| (By | Henry Villard, his attorney in fact, | |
| (| Julius Schmidt, | (Seal) |
| (By | Henry Villard, his attorney in fact, | |

(Adolph Otto, (Seal)
(By Henry Villard, his attorney in fact,

(Michael Benjamin, (Seal)
(By Henry Villard, his attorney in fact,

(Carl Staehlin-Bucknor, (Seal)
(By Henry Villard, his attorney in fact,

(F. S. Van Nierop, (Seal)
(By Henry Villard, his attorney in fact,

(Wilhelm Koester, (Seal)
(By Henry Villard, his attorney in fact,

(Ben Holladay,
(President of the Oregon and California
(Railroad Company.

(A. G. Cunningham,
(Secretary of the Oregon and California
(Railroad Company.

(Ben Holladay, (Seal)

.....

In Presence of

J. N. Dolph,

R. H. Fowler.

(SEAL OF THE OREGON &
CALIFORNIA RAILROAD CO.)

STATE OF CALIFORNIA,)
) ss.
City and County of San Francisco.)

BE IT REMEMBERED, that on the thirty first day of July, A. D. 1874, before me, the undersigned,

a Commissioner of deeds for the State of Oregon, residing at San Francisco, California, duly commissioned, sworn and fully qualified personally came J. W. Ames, President of the European and Oregon Land Company, and Pelham W. Ames, Secretary of the European and Oregon Land Company whose names are subscribed to the foregoing instrument as parties thereto and as the president and secretary of said European and Oregon Land Company, both personally known to me to be the individuals named and described in and who executed the said instrument, and they severally acknowledged to me, that he, the said J. W. Ames, as president, and he, the said Pelham W. Ames, as secretary of the European and Oregon Land Company, executed the foregoing instrument as and for the act and deed of the said European and Oregon Land Company freely and voluntarily and for the uses and purposes therein mentioned, and he, the said Pelham W. Ames, being by me duly sworn did depose and say that he is the secretary of the European and Oregon Land Company and resides at San Francisco, California; that he is the legal custodian of, and is acquainted with and has in his possession, the corporate seal of the European and Oregon Land Company, that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by him, as secretary of said Company, on the thirty first day of July, A. D. 1874, by order of the Board of directors of said Company and that he signed his name as secretary thereto by the like order of the Board of Directors of said company.

And be it further remembered that on this thirty first day of July, 1874, before me personally appeared Milton S. Latham, Faxon D. Atherton and Wm. Norris, all to me personally known to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as Commissioner of Deeds for the State of Oregon at my office in San Francisco, California, the date herein first above written.

F. J. Thibault,

(COMMISSIONER'S SEAL)

Commissioner for Oregon in California.

STATE OF OREGON,)
) ss.
 County of Multnomah.)

BE IT REMEMBERED, That on this 25th day of July, A. D. 1874, before me, the undersigned, Notary Public within and for said county of Multnomah and State of Oregon, appeared the within named Henry Villard, in his own proper person and also the within named Heinrich Hohenemser, by his attorney in fact, the said Henry Villard, and also the within named Aron Niederhofheim, by his attorney in fact the said Henry Villard, and also the within named Julius Schmidt, by his attorney in fact, the said Henry Villard, the within

IN WITNESS WHEREOF, I have hereunto set my hand as such Notary Public and affixed my notarial seal on this the day and year last above written.

(NOTARIAL SEAL)

STATE OF OREGON,)
County of Multnomah,) ss.

BE IT REMEMBERED, That on this 25th day of July, A. D. 1874, before me the undersigned, a Notary Public in and for the said County of Multnomah and State of Oregon, duly commissioned and qualified,

personally came Ben Holladay, president of the Oregon and California Railroad Company, and A. G. Cunningham secretary of the Oregon and California Railroad Company, whose names are subscribed to the foregoing instrument as parties thereto and as the president and secretary of said Oregon and California Railroad Company, both personally known to me to be the individuals named and described in and who executed the said instrument and they severally acknowledged to me that he, said Ben Holladay, as president, and he, the said A. G. Cunningham as secretary of the Oregon and California Railroad Company executed the foregoing instrument as and for the act and deed of the said Oregon and California Railroad Company, freely and voluntarily and for the uses and purposes therein mentioned; and he the said A. G. Cunningham, being by me duly sworn, did depose and say that he is the secretary of the Oregon and California Railroad Company, and resides at East Portland, Multnomah County, Oregon, that he is the legal custodian of, and is acquainted with and has in his possession the corporate seal of the Oregon and California Railroad Company; that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by him as secretary of said Company, on the 25th day of July, A. D. 1874, by order of the Board of Directors of said Company, and that he signed his name as secretary thereto, by the like order of the Board of Directors of said Company; and the said Ben Holladay one of the parties to said instrument acknowledged to me that he individually

deeds for the State of Oregon, residing at San Francisco, in the State of California, that he is by the laws of the State of Oregon, duly authorized and empowered to take and certify under his official seal, acknowledgments to deeds, conveyances and other instruments of writing; and that full faith and credit are due to his official acts as commissioner of deeds for the state of Oregon.

WITNESS my hand and the seal of the State, at my office in the City of Salem, State of Oregon, this 25th day of July, A. D. 1874.

S. F. Chadwick,

Secretary of the State of Oregon.

(SEAL OF THE STATE
OF OREGON.)

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, parties to the above and foregoing contract and instrument of writing, entered into and executed by us and by and through our said attorney in fact, Henry Villard, do hereby ratify and fully confirm, under our hands and seals, the act and deed of our said attorney in fact, in executing said contract and writing, and in entering into and executing the several covenants and agreements therein contained, as fully and completely to all intents and purposes as if the same had been done and executed by us in person, and under our own proper hands and seals. This done in pursuance and fulfillment of the condition and restriction providing for such ratification contained in our

letters of attorney, appointing and authorizing him the said Henry Villard, as such our attorney in fact, for us and in our name, place and stead to assent and agree to enter into and execute the said instrument of writing and the covenants and agreements therein contained.

WITNESS our hands and seals this twenty-sixth day of September, A. D. 1874.

| | |
|------------------------|--------|
| H. Hohenemser, | (Seal) |
| A. Niederhofheim, | (Seal) |
| J. Schmidt, | (Seal) |
| Dr. Adolf Otto | (Seal) |
| F. S. Van Nierop, | (Seal) |
| Wilh Koester, | (Seal) |
| M. Benjamin, | (Seal) |
| Carl Staehelin-Bucknor | (Seal) |

Die worstchenden von mir Notar und den beiden zengen volzogenen unterschiften und Siegel des Herrn Heinrich Hohenemser Diretors der Deutschen vereins Bank dahier, des Herrn Aron Niederhofheim Von Standes der filials der Bank fur Handel und Industrie dahier, des Herrn Julius Schmidt Kaufmoouns dahier, des Herrn Dr. Frederic Salomon Nierop, Directors der Amsterdam'chen Bank zur Amsterdam, des Herrn Wilhelm Koster in Ferina Koster & Co. Zu Mannheim, des Herrn Michael Benjamin Directors der Baierischen Wechsler Bank zu Meinchen, und des Herrn Carl Staehelin-Bucknor in Fiamma Iselin & Staehelin zu Basel, werden hierduret amtliet als aecht beglanbigt

wobei, dieselben angaben, dass tie obigen vertrag zu dem darin angegebenen Zwecke unterzeick net hatten. Frankfort Or/M der sick und zwanzigster September achtzenn hundred vier und siebenzig.

Peter Ullman als zenge,
Joham Kattenwick als zenge,
Dr. Carl Otto Orthenberger.

(Notarial Seal)

Notar.

pier obigo

einschathenez der

zwei worte "zu Basel"

Peter Ullman als zenge,
Johann Kattenwick als zenge.
Dr. Carl Otto Orthenberger,

Notar

(Notarial Seal)

No. 1040

Fees pd \$2-00/100

CONSULATE-GENERAL OF THE UNITED
STATES OF AMERICA

FRANKFORT-ON-THE-MAIN, GERMANY.

I, A. L. Wolff, Vice Consul-General of the United States of America at Frankfort-on-the-Main, do hereby certify that Dr. Carl Orthenberger, whose name is subscribed to the paper hereunto annexed, was at the time of subscribing the same, Notary Public at Frankfort-O/M Kingdom of Prussia, duly commissioned and that full faith and confidence are due to his acts as such.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the Consulate-General at Frankfort-on-the-Main, the 11th day of November in the year 1874 and of the Independence of the United States of America, the 99th.

A. S. Wolff,

(CONSULATE SEAL) Vice Consul-General

Received for Record, Jan 4th, 1875.

9104.

Deed Book 246, Page 468.

O. C. R. R.

TO

PORTLAND.

Deed No. 2046. Issued for Contract No. 1804.

THIS INDENTURE, Made this third day of July, A. D. 1893, between the Oregon and California Railroad Company duly incorporated under the laws of the State of Oregon, party of the first part and the City of Portland, party of the second part, WITNESSETH:

THAT WHEREAS, the party of the first part did on the sixteenth day of February A. D. 1883, by its contract Numbered 1804, sell and agree to convey unto A. G. Cunningham the land hereinafter described, for the sum and price of One Thousand Nine Hundred and Fifty Eight $82/100$ (1958-82/100) Dollars, to be paid as in said contract provided; and

WHEREAS, said purchase price has been fully paid to the party of the first part and said The City of Portland, as assignee of said A. G. Cunningham, has thereby become entitled to a conveyance from the party of the first part of all the right, title and interest which it, the party of the first part has or may hereafter acquire from the United States in and to said land; and

WHEREAS, by the judgment and decree of the Circuit Court of the State of Oregon for the County of Multnomah, rendered on the 12th day of July, A.D. 1890 in a suit in equity in which James Steel was plaintiff and said Oregon and California Railroad Company and the Union Trust Company, a corporation, incorporated under the laws of the State of New York, were defendants and appeared in said suit, it was found adjudged and decreed by said Court that lands which had been sold by the party of the first part prior to the 12th day of May, A. D. 1887, are not included in or covered by *by* that certain deed of trust executed by the said Oregon and California Railroad Company, to said Union Trust Company, on the 1st day of July, A. D. 1887, which trust deed is duly recorded on the record of Mortgages for said Counties of Multnomah and Clackamas in the State of Oregon, and it was further decreed that said trust deed is not a lien upon such lands, and that said Union Trust Company has no right under the terms of said trust deed, to or any interest in the money received by said Oregon and California Railroad Company for lands so sold by it prior to said 12th day of May, A. D. 1887,

which judgment and decree is now in full force and effect, and is also recorded in the record of mortgages for said Counties of Multnomah and Clackamas.

NOW THEREFORE, in consideration of the premises and of the payment to the party of the first part of the said sum of One Thousand Nine Hundred and Fifty-eight 82/100 (1958-82/100) Dollars, the receipt whereof is hereby acknowledged, the said Oregon and California Railroad Company, party of the first part, does hereby grant and convey unto said party of the second part, its successors and assigns, all of the said land which is known and described as follows, to-wit: The south half of the northeast quarter and the south half of section twenty-five (25), the north half of the northeast quarter and the northwest quarter of section thirty-five (35), all in township one (1) south range five (5) east; also the south half of section nineteen (19) township one (1) south range six (6) east Willamette Meridian, containing according to the United States Survey thereof, Nine Hundred and Fifty-five 52/100 (955-52/100) acres, be the same more or less.

TO HOLD THE SAID PREMISES, with the appurtenances thereto unto the said party of the second part its successors and assigns forever, reserving however, a strip of land one hundred feet wide to be used by the Oregon and California Railroad Company for right of way and other railroad purposes when the railroad of said Oregon and California Railroad Company, or any of its branches is or shall be located upon the prem-

ises; and the right to take all water needed for the operating of said railroad; and also reserving and excepting from said described premises so much and such parts thereof as may be mineral lands other than coal and iron. And the said party of the second part does hereby, for its self and its successors and assigns covenant with the said Oregon and California Railroad Company, its successors and assigns, that it will erect and maintain on the boundary line or boundary lines, between said premises and such right of way, a good, lawful and substantial fence sufficient to turn stock.

IN WITNESS WHEREOF, The said party of the first part has caused these presents to be sealed with its seal and executed by its 2nd Vice President and Secretary and the party of the second part has herein set hand and seal the day and year first above written.

THE OREGON AND CALIFORNIA RAIL-
ROAD COMPANY,

(Seal) By R. Koehler, 2nd Vice-President.

THE OREGON AND CALIFORNIA RAIL-
ROAD COMPANY,

(Seal) By Geo. H. Andrews, Secretary.

(CORPORATE SEAL)

In presence of:
David Loring,
F. G. Ewart.

(Seal)

STATE OF OREGON,)

) ss.

County of Multnomah,)

BE IT REMEMBERED, That on this third day of July, A. D. 1893, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and qualified, personally came R. Koehler, 2nd Vice President of the Oregon and California Railroad Company and Geo. H. Andrews, secretary of said Company, whose names are subscribed to the foregoing instrument as 2nd vice president and secretary of said Company both personally known to me to be the same individuals named and described in and who executed the said instrument and they severally acknowledged to me that he, the said R. Koehler as 2nd vice president and he, the said Geo. H. Andrews, as secretary of the said Oregon and California Railroad Company, executed the foregoing instrument as and for the act and deed of said corporation for the uses and purposes therein mentioned. And the said Geo. H. Andrews being by me duly sworn did depose and say that he is the secretary of the Oregon and California Railroad Company and resides at Portland, Multnomah County, Oregon; that he is the legal custodian and is acquainted with and has in his possession the corporate seal of said Company; that the seal affixed to the foregoing instrument as the seal of said Company, is such corporate seal; that the same was so affixed by him as secretary of said Company on the 3rd day of July, A. D. 1893, by order of the Board of

Directors of said Company, and that he signed his name thereto by the like order of the Board of Directors of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Rec'd for record,

Dec. 31st, 1897, at 10:50 a. m.

(NOTARIAL SEAL) David Loring,
Notary Public for Oregon.

No. 9555

STATE OF OREGON,)
County of Multnomah,) ss.

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement, between the European and Oregon Land Company and Milton S. Latham, et al., has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 3rd day of May, A. D. 1913.

(SEAL) JNO. B. COFFEY,
County Clerk.

Filed May 10, 1913.

A. M. CANNON,
Clerk of District Court.

DEFENDANTS' EXHIBIT 402

is a certified copy of a quit-claim deed executed by the Oregon and California Railroad Company and Union Trust Company to the City of Portland, dated March 14, 1892, recorded page 203, Book 179 of the Records of Deeds of Multnomah County, Oregon, July 26, 1892, and is as follows:

Book 179 Page 203

Deed No. 995

Oregon & Calif. R. R. Co. to City of Portland.

QUITCLAIM Deed No. 1719 Issued for Contract
3827

This Indenture made this 14th day of March A. D. 1892 between the Oregon and California Railroad, a Corporation duly incorporated under the laws of the State of Oregon party of the first part. The Union Trust Company of New York a corporation created and existing under and by virtue of the laws of the State of New York party of the second part and the City of Portland hereinafter called the purchaser, party of the third part.

Witnesseth: That in consideration of the sum of
.....Dollars paid to the party of the first part
and the sum of Seven hundred and sixty (760) dollars
paid to the party of the second part by direction of the
party of the first part as per terms of deed of trust by
party of the first part to party of the second part of
date July 1st, 1887 The Oregon and California Railroad
Company doth hereby remise, release and quitclaim unto
said purchaser his heirs and assigns all of the right, title
and interest which it the said Oregon and California
Railroad Company now has or owns or may hereafter
obtain or acquire in and to the hereinafter described
lands and the said Union Trust Company of New York,
doth hereby release and confirm unto said purchaser his
heirs and assigns the said lands which are described as
follows: to-wit:

The north west quarter of the South West quarter
and the South west quarter of the South East quarter
of section twenty-three (23) township One (1) South
range four (4) East and the north half of the South
West quarter of section five (5) Township two (2)
South range five (5) East Willamette Meridian con-
taining according to the United States survey thereof
one hundred and sixty (160) acres be the same more or
less being understood to be part of the land granted by
the United States to the said Oregon and California
Railroad Company and embraced within the terms of
and conveyed by a certain deed of trust executed by the
party of the first part to the party of the second part,

as Trustee and bearing date July 1st, A. D. 1887.

To hold the said premises with the appurtenances thereto unto the said purchaser, his heirs and assigns, forever freed and discharged from the lien powers, and trusts of said deed of trust or mortgage of July 1st, 1887 reserving however a strip of land one hundred feet wide to be used by the Oregon and California Railroad Company for right of way and other railroad purposes when the railroad of said Oregon and California Railroad Company or any of its branches is or shall be located upon the premises and the right to take, all water needed for the operating of said railroad, and also reserving and excepting from said described premises so much and such parts thereof as or may be mineral lands other than coal or iron. And the said purchaser does hereby for himself and his heirs and assigns covenant with the said Oregon and California Railroad Company its successors and assigns that he will erect and maintain on the boundary line or boundary lines between said premises and such right of way a good and lawful and substantial fence sufficient to turn stock.

In witness whereof the said parties of the first and second parts, have caused these presents to be sealed with their respective seals, and executed by their respective Presidents and Secretaries and the party of the third part has hereunto set his hand and seal the day and year first above written.

The Oregon and California Railroad Company
By R. Koehler, 2nd Vice President.

The Oregon and California Railroad Company

By Geo. H. Andrews, Secretary.

The Union Trust Company of New York.

By Jas. H. Ogilvie, V President.

The Union Trust Company of New York.

By A. W. Kelly, Secretary. (Seal)

In presence of:

David Loring

R. McMurphy

J. A. Shaughnessy

H. W. Ramsay

(Corporate Seal)

STATE OF OREGON,) ss.
County of Multnomah,)

Be it remembered that on this 14th day of March A D 1892 before me the undersigned a Notary Public in and for the said County and State duly commissioned and qualified personally came R. Koehler 2nd Vice President of the Oregon and California Railroad Company and Geo. H. Andrews Secretary of said Company whose names are subscribed to the foregoing instrument as 2nd Vice President and Secretary of said Company both personally known to me to be the said individuals named and described in and who executed the said instrument and they severally acknowledged to me that he the said R. Koehler as 2nd Vice President and he the said Geo. H. Andrews as Secretary of the said Ore-

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

David Loring

Notary Public for Oregon.

STATE OF NEW YORK)
) ss.
City and County of New York)

Be it remembered that on this 22nd day of April A D One thousand and eight hundred and ninety-two before me a Commissioner of the State of Oregon in the State of New York residing in said City of New York, personally came Jas. H. Ogilvie Vice President

of the Union Trust Company of New York the corporation described in the foregoing instrument as the party of the second part thereto and who is personally known to me and he being by me duly sworn did depose and say that he is and at the time of the execution of said instrument was, the Vice President and that A. W. Kelley is and then was the Secretary of the said Company that he knew the corporate seal of said Company and that the seal affixed to the foregoing instrument as such is said corporate seal; that the said seal was affixed by authority of the Board of Directors of said Company and that he Jas. H. Ogilvie as Vice President aforesaid signed and that the said A. W. Kelley as Secretary aforesaid attested the said instrument by like authority. And the said Jas. H. Ogilvie Vice President as aforesaid acknowledged the execution of said instrument as the act and deed of said The Union Trust Company of New York for the purposes therein expressed.

In witness whereof I have hereunto subscribed my name and affixed my official seal at my office in the City of New York the day and year in this certificate first above written.

(Notarial Seal)

William Shillaber,

Commissioner for the State of Oregon in the State of New York.

Received for record July 26th, 1892 at 2:35 P. M.

STATE OF OREGON,) ss.
 County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Deed, Oregon and California Railroad Company to City of Portland, recorded in Book 179 page 203 Record of Deeds, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Deed as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 6th day of May, A. D. 1913.

JNO. B. COFFEY,

(Seal)

County Clerk.

Certified copy of Deed Oregon & California Railroad Company to City of Portland.

Filed May 10, 1913.

A. M. CANNON,

Clerk District Court.

UNNUMBERED EXHIBITS

Letter Benjamin Harris Brewster, Attorney General, to Hon. H. M. Teller, Secretary of the Interior, dated June 15, 1882, being found at pages 35 to 39, inclusive, of Executive Document No. 29, 47th Congress,

2nd Session, in answer to a letter of January 5th submitting questions arising upon an application of the New Orleans Pacific Railway Company for certain lands claimed under land grant made to the New Orleans, Baton Rouge & Vicksburg R. R. Co. by act of March 3, 1871. (See page 2512, Vol. 5, Printed Record.)

Statement from corporate records of Oregon Central Railroad Company of Salem, Oregon Central Railroad Company of Portland, and Oregon & California Railroad Company, compiled by Mr. McAllaster. (See page 2034, Vol 4, Printed Record.)

Patent issued by the United States to the Oregon & California Railroad Company, which includes the lands described in contract No. 5394, being the third item to Exhibit No. 9 to the answer. (See pages 2045 et seq., Vol. 4, Printed Record.)

Form of First Mortgage Construction Bonds of the Oregon Central Railroad Company (West Side). (See pages 2544 et seq., Vol. 5.)

Form of Coupon to Bond above described. (See page 2548, Vol. 5.)

First Mortgage Bond of the Oregon & California R. R. Co. of date April 15, 1870. (See page 2548, Vol. 5, Printed Record.)

Whereupon, the appellants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union

Trust Company, individually and as trustee, now present and tender to the court their statement of the evidence prepared and to be filed herein under and pursuant to Rule 75 of Rules of Practice for the Courts of Equity of the United States, and respectfully ask the court to approve the same and to make such order in relation thereto as is required by law and said Rule.

WM. D. FENTON,

P. F. DUNNE,

WM. D. FENTON,

Attorneys for Appellants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as Trustee.

DOLPH, MALLORY SIMON & GEARIN,

JOHN M. GEARIN,

Attorneys for Appellant Union Trust Company individually and as Trustee.

Whereupon, on March 4, 1914, said court made and entered in said cause an order approving said Statement of the Evidence as follows:

(TITLE)

Now at this day this cause came on to be heard upon the application of the appellants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants, for an order approving the Statement of the Evidence prepared and tendered by the appellants and now tendered to be filed herein under Rule 75, Rules of Practice for the Courts of Equity of the United States, the appellants appearing by their attorneys Wm. D. Fenton and John M. Gearin, and the complainant appearing by its attorneys B. D. Townsend and Fred C. Rabb, Special Assistants to the Attorney General of the United States, and it appearing to the Court that the parties were unable to agree as to the reduction of so much of said testimony to narrative form in the Statement of the Evidence as it set out by question and answer therein, and it appearing to the Court that the evidence in said cause has been reduced and stated in narrative form in said Statement of the Evidence other than the said evidence set out by question and answer, and it further appearing to the Court that in its judgment the testimony of the witnesses thus set out by question and answer should be reproduced in the exact words as reported and stated in said Statement of the Evidence, and it further appearing to the Court that the Statement of the Evidence as thus prepared is true, complete and properly prepared, as provided by said Rule 75 of the Rules

of Practice for the Courts of Equity of the United States, and there is no objection to the approval of said Statement of the Evidence by the Court;

IT IS ORDERED that the said Statement of the Evidence now tendered to be filed and thus prepared be and the same is hereby approved and the same is now directed to be filed in the Clerk's office of this court as of this date, and become a part of the record for the purposes of the appeal.

CHARLES E. WOLVERTON,

Judge.

(Endorsed) Filed March 4th, 1914.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to-wit: on the 29th day of August, 1913, there was duly filed in said Court the petition for appeal of Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, defendants, John L. Snyder and others, defendants-crosscomplainants, and Frank Terrace and others, interveners-defendants, in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED
STATES

for the District of Oregon

Ninth Circuit

NO. 3340 IN EQUITY

United States of America, Complainant,

vs.

Oregon and California Railroad Company, Southern
Pacific Company, Stephen T. Gage, individually
and as Trustee, and Union Trust Company, indi-
vidually and as Trustee, Defendants.

JOHN L. SNYDER, Juliaus F. Prah, Albert E.
Thompson, James Barr, Fred Witte, W. A. Anderson,
W. H. Anderson, O. M. Anderson, F. E. Williams,
Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E.
Anderson, Albert Arms, Joseph A. Maxwell, Isaac Mc-
Kay, J. R. Peterson, D. MacLafferty, Edgar MacLaf-
ferty, V. V. McAboy, George C. MacLafferty, George
Edgar MacLafferty, E. L. MacLafferty, B. N. Mac-
Lafferty, Enos M. Fluhrer, F. W. Floeter and S.
Shryock.

SIDNEY BEN SMITH, Orrin J. Lawrence, Robert G. Balderee, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschild, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler and Marvin Martin.

JOHN H. HAGGETT, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman,

Defendants, Cross-Complainants.

WILLIAM F. SLAUGHTER, Peter Merges, Oscar Thompson, H. H. Zaff, N. Zaff, C. M. Cutbirth, G. T. Buckner, W. L. Buckner, B. O. Slagle, Mary M. Leitzel, M. E. Buckner, J. J. Utzinger, Morton Nelson, Pauline Jacobs, Peter Grime, K. M. Birkeland, Owne Alopaeus, Charles Wirkkala, J. Gribler, Sven A. Grime, Nels P. Sorenson, John Lundgren, Lowell A. Young, John Patterson, Alice Perry, Thomas J. Flip-pin, Samuel Sonneland, Frank E. Young, R. R. Giltner, Albert Brix, Chester D. Sewall, P. J. Brix, Russell E. Sewall, A. A. Murphy, Charles E. Hays, I. L. Randall, H. A. Munson, Henry Burboch, John H. Carlson, James Brown, Charles W. Mayger, James D. Young,

Edward F. Cooper, Anton Peterson, John F. Edwards, Edward Edwards, Alexander Opsal, Paul Anderson Bae, P. Jacobs, Julius T. Jacobs, Charles Ottason, Kate K. Spowers, George Spowers, Daniel Spowers, Abraham L. Yornall, Josie Powers, John Graber, Fred Anderson, Walter Shay, Josephine Anderson, Louis Osberg, Laronard Osberg, Eli Bangs, Duncan Scott, William H. Short, George A. Mottman, June Moltman, Leitha Galliher, Nellie Galliher, Sarah Galliher, Robert S. Moseley, John T. Ross, Harriet A. Hunter, George W. Hunter, Darwin E. Yoran, Frank Hampton, Rhoda Hampton, Mary A. Griffin, Frank N. Smith, Layton Smith, Marsh Martin, Clay Zumwalt, Green Zumwalt, Benjamin H. Dunlap, William H. Alexander, Jake F. Berger, Warren G. Thatcher, J. Edgar Furnish, Tina A. Furnish, James O. Smith, William Andrews, Mae Larimer, William F. Gilstrap, Aaron Rathmell, F. G. Blake, Mathias Gillespie, Jeter Virgin, James N. Randle, Louisa Randle, Absalom C. Woodcock, William Polders, Mary E. Cowan, Eugene Ward, Nellie Smith, Rena Ward, Aaron C. Rathmell, Sarah L. Rathmell, Walter N. McCornack, Walter W. McCornack, Edwin A. McCornack, William R. Bell, Laura Martin, Elizabeth Andrews, H. H. Hunter, Herbert Beadle, Rodney Scott, Robert P. Allison, Clemons E. Carlile, Percy H. McDonald, Hattie Spencer, Francis Schank, Elizabeth Schank, Joseph W. Kays, James R. Deal, Fred W. Carruth, J. H. Roediger, Arthur Hotchkiss, Jr., M. R. Clark, Moses N. Wagner, V. J. Warren, E. N. Moseley, Frank S. Lydick, A. A. Thome,

John Decker, George G. Gross, George Walter Griffin, Mary F. Berger, J. F. McDonald, James J. McCormack, Frank W. Osburn, Charles P. Ferguson, Eugene R. Pierce, Ray Littlefield, Frederick G. Young, A. Tirell, John B. Hiltibrand, Chancey W. Butler, Junius E. Ward, Joseph D. Butler, William J. Rhynsburger, Francis P. Young, Charles F. Littlefield, Martha Littlefield, Araminta H. Gross, Rock S. Bryson, Henry T. Withrow, Martin T. Mulkey, W. W. Branstetter, Peter Whitaker, Milton Nichols, George Nichols, Mercy S. Wheeler, Eliza L. Spencer, Jennie L. Spencer, Clara F. Spencer, Jefferson D. Spencer, Henry A. Tromp, Septimus S. Spencer, John M. Wells, James McCallum, Marceline Whittaker, T. J. Harris, L. M. Raabe, Fred J. Maly, J. D. Howell, William J. Maly, Clarence Hougén, Daniel E. Eyre, John Kloster, Carl L. Vickerman, William Dickerson, F. G. Graham, George W. Moffitt, W. S. Wickersham, W. B. Wickersham, W. R. Petrie, Sarah Wickham, P. C. Stevenson, F. J. Fahy, Edward Kammerer, John C. Moomaw, Angus McLean, D. J. Ferriter, Clarence Griffin, Joseph E. McCoy, Joseph McCoy, B. N. Harrington, W. G. Erickson, Valentin Sorensen, B. E. Cook, S. C. Cook, H. O. Bolduan, Albert O. Monson, Louis S. Perkins, Joseph Ogulin, C. Y. Lowe, B. G. Schuyler, J. D. Boobar, B. F. Seymour, G. H. Smith, Alexander Padore, H. L. Houston, John D. Burns, Thomas E. Thompson, Edward H. Hurless, Bert Folsom, S. Graham, John Yates, N. McNair, Ernest E. Snow, Otto H. Gerdes, Christian Vorland, H. Renhardt, P. N. Kulseth, R. D. Mc-

Nair, David Tozier, Edward Maag, C. F. Foncanon, Thomas H. Hanby, Carl H. Olson, Maud E. Costello, G. W. Wilson, John Sinclair, M. B. Corthell, Kate N. Harmon, Kate M. Harmon, George W. Harmon, T. H. Mehl, A. F. Caxmenon, A. F. Carmenon, E. A. Costello, Edith M. Cameron, Wilbert Shook, William M. Mitchell, A. H. Haude, Bengt Johnson, E. E. Hampton, George Belloni, Fred Slagle, A. F. Linegar, Charles Moomaw, William Schroeder, Samuel Nosler, Charles McCabe, Elmer Kilpolrick, Bessie M. Cox, M. O'Rurke, M. O'Rourke, Frank G. Scribner, C. Hoepfner, E. A. Cox, William Schroeder, J. H. Fitzgerald, Christina Hanson, John C. Strong, Louis Strong, Reuben F. Tate, C. J. Tibbitts, Conrad Tauscher, Joseph A. Tauscher, Nik Auderer, Ben Orstad, J. R. Herron, Berndt F. Bengston, Fred Gage, C. E. Edwards, Paul A. Sandberg, Z. T. Thomas, Jean A. Houston, Hiram Edwards, Alfred Rodine, A. B. Campbell, Carrie Rodine, Charles Rodine, Rudolph Tauscher, Paul E. Tauscher, Margaret Murphy, Wenzel A. Tauscher, D. George Frissendahl, L. B. Judson, Edward Joehnk, George Seelig, Ira Chapman, Albert Seelig, John W. Butler, Robert Marsden, Edwin McArthur, Guy Gould, Henry Wells, C. A. Metlin, Emil Ogren, Samuel A. Conro, James M. Conro, Otho L. Hopson, Jacob W. Williams, L. R. Robertson, Charles Schappers, August Peterson, Ida Rodine, Effie Rodine, Jesse J. Ott, B. F. Willey, Jorden Schappers, Herman Romaine, William Romaine, J. M. Upton, E. E. Straw, Sarah Edmunds, W. B. Farrin, Frank C. Farrin, Jesse G. Farrin, George

N. Farrin, E. L. C. Farrin, John McMahon, Henry Michelbrink, Albert N. Gould, Algred Tyberg, Alfred Tyberg, Luther H. Pace, John Michelbrink, John Muchelbring, Samuel Ott, Isaac N. Price, Richard J. Henry, J. J. Kibble, Joseph Schappers, W. H. Riley, Christopher Krugg, James C. Days, John Schappers, R. A. Clarke, J. B. Castle, Clarence A. Gould, R. L. Martin, Joseph Whitaker, Albert Sitzloff, W. W. Wyatt, A. A. Adams, J. C. Parker, C. L. Flynn, Louis Hatley, William Brackinreed, D. Cook, F. G. Larson, W. G. Warnick, August LaLonde, J. F. Boncutter, Alfred McIntosh, Oluf Peterson, Robert F. Estis, James B. Abrams, A. C. Blake, Edward McAlpine, Louis Barr, M. N. Hawley, A. B. Siemons, H. A. Reasoner, R. H. Siemons, George A. Siemons, Fred C. Siemons, Harry J. Siemons, Curtis E. Abrams, Emma Morrison, R. L. Barr, Thomas C. Linkin, Isaac W. Powell, T. L. Harris, John Maag, Henry G. Raimann, Henry J. Raimann, Daniel Slentz, William A. Neal, Don L. Greene, George L. Mathews, R. T. Knowlton, A. T. Morrison, George T. Moulton, C. E. Schroeder, P. G. Schroeder, Samuel C. Braden, Ralph M. Knight, George Lainger, Thomas E. Davis, Ernest A. Michel, Raymond E. Baker, Albert L. Volkmmer, Solomon C. Endicott, W. J. Moon, Amos L. Nosler, Jesse W. Hall, Claude H. Nosler, S. C. Bronson, Binger E. Hermann, Robert P. Carman, Henry B. Steward, Maxwell H. Dement, August H. Bender, Charles A. Pendleton, Rebecca E. Clarke, Julius Frazer, Thomas Armstrong, D. E. Buchanan, O. E. Buchanan, E. E. Buchanan, E. M. Furman, F. W.

Pett, Reason C. Endicott, John Ruppert, John Bretz, Harry J. Winsten, H. A. Featherman, E. A. Hannah, Walter W. Kroger, Adolphus A. Rounds, George A. Wilson, Philip Angell, Max Wittman, Minnie Burns, Clara J. McCoy, Alex Hanson, A. C. Case, E. Knippenberg, Bennie Severson, William Whobrey, William McNair, David McNair, Willis Whobrey, Gustav S. Breuer, Henry G. Volkmar, Kenneth E. Hannah, B. Ranum, Jay L. Smith, John Gorwell, George W. Scott, Otto N. Draves, John C. Schliem, W. V. Laird, Herbert Foss, Vernon L. Scott, J. L. Minder, Franklin S. Reeve, A. J. Meachan, L. Wm. Foss, Verner Barker, C. O. Dryden, E. C. Barker, James Richmond, Levi Foss, Nels O. Monson, Andrew Minder, Thurm Craigo, Ernest E. Remund, S. L. Remund, F. W. Stowell, C. B. Rockney, T. A. Young, Edward A. Minder, Clayton A. Ruckel, Witalis Johnson, John Nocker, John Mocker, F. G. Trollier, Paul F. Shaw, Levi Smith, Edward J. Moores, Carl August Almquist, N. A. Miller, Louis Kipka, Theodore Weisner, Gilbert Hanson, Edward J. Reimann, August Jensen, Fred Melson, Fred Nelson, Edward A. Benson, Carl R. Hillstrom, Charles Swenston, W. H. Rees, Gustav Despiegler, John Hopp, A. P. Buchanan, Thomas Fagan, W. G. Congdon, William Virgin, Ernest L. Hulburt, Ira Flagstead, Arthur D. Tupper, L. Q. Huey, William H. Hulburt, Henry Ebinger, Amel Running, Susie E. Fickes, Albert Anderson, Albert Running, Severin Anderson, John A. Krhoun, Wm. G. Manning, Wm. F. Manning, E. Running, J. F.

Forsyth, David Ebinger, Jr., Arne Running, Christine A. Sterns, John Leake, George F. Haehnel, Jacob H. Conrad, Charles Anderson, Arthur Anderson, Christian Addison, Sven C. Johnson, Ida L. Hyatt, W. Blankenberg, Ernest Matzke, D. G. Gibson, D. W. Gibson, George B. Adams, Otto Bergman, O. L. Nosler, J. E. Slocum, Earnest Folsom, P. J. Peralta, George Folsom, R. R. Pounder, S. L. Curry, John A. Nordeen, Charles Fickes, John Feschler, F. T. Desmond, C. H. Chelson, William Thring, O. Kregnes, S. E. Block, George H. Schulenberg, Herbert W. Shaw, Per Johnsen, John W. Anderson, Albert Hutchinson, Field, C. V. Johnson, J. C. Simpson, C. W. Kenkle, S. J. Keezel, C. M. Minton, A. L. Pugsley, A. W. Pugsley, E. E. Wilson, W. E. Allen, H. W. Conger, Guy Frink, J. H. Daniel, A. J. Johnson, Willis Vidito, V. A. Vidito, A. M. Taylor, W. H. Guinn, C. E. Banton, A. H. Buckingham, W. D. Barclay, G. W. Coon, G. W. Humphrey, George R. Hall, Jr., G. E. Lilly, J. S. Oakes, E. L. Oakes, B. W. Porter, P. R. Starr, V M. Woodcock, C. L. Beach, John Beach, W. S. Linnville, Philo T. Starr, Edwin N. Starr, Wilbur F. Starr, Wade Hinton, Amy Hinton, Ivan Rickard, J. Rickard, Lida Davidson, Pearl Persinger, Claude I. Starr, William A. Schmidt, Glenn W. Large, Thomas Large, Thomas J. Large, Stephen O. Rice, Thomas H. C. Brasfield, Joseph H. Dawson, John C. Davis, Leslie B. Kent, Victor H. Kent, Harvey G. Pugh, Ernest G. Pugh, Cloud H. Davidson, E. D. Farwell, Charles A. Pugh, George W. Barcus,

M. H. Bauer, J. R. Buckingham, Walter Barton, M. C. Starr, L. J. McNair, Charles S. Williams, J. J. Kenney, Chancey I. Barclay, T. M. Coon, C. E. Dinges, A. F. Oakes, C. H. Woodcock, John A. McBride, G. G. Horning, W. K. Taylor, John Withycombe, G. A. Clark, S. A. King, Sarah M. Hawley, Arthur W. Hawley, Jessie Dale Perrin, T. L. Blackledge, J. H. Edwards, Walter Poole, O. J. Blackledge, J. P. Gragg, D. V. Gragg, Ivan Hawley, H. C. Hinton, Ivan Hinton, G. H. Hibbs, Charles Henry Perrin, F. B. Conner, Jacob Edison, John Willbanks, M. C. Miller and Arthur Persinger.

EDWARD D. TOWNSEND, Louis G. English, Ralph W. Core and Edgar C. Holladay.

JOHN BURBEE, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

MILO F. DENNIS and Leopold H. Dietz.

FRANK TERRACE, Andrew C. Anderson, P. J. Applegate, Mary E. Anery, George Anderson, Chas. B. Abbott, Agnes Aamodt, Chas. H. Anderson, Harry Armstrong, Emil Affeldt, Clara Abbott, Ales Aker, Knut S. Aker, Margaret S. Armstrong, Andrew G. Anderson, Augusta Anderson, Julius W. Augustine, Edith Theresa Anderson, George T. Atteberry, G. A. Actzel, Asa M. Akin, George E. Adams, Elizabeth Austin, Ralph O. Austin, H. Theodore Ahrens, James M. Adams, William Anshutz, John S. Anderson, Axel

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Miss Susan Skidmore, H. J. Chapman, John W. Skidmore, H. C. Wilson, Geo. W. Skidmore, C. W. Hoyt, Etta M. Gillette, John Vanderkinter, G. M. Fiske, Carl Belohlav, Carl Belohlar, Orland M. Gillette, P. L. West, Walter Cramer, John Stenger, M. B. Case, G. H. Unger, W. F. Zeck, John Brandt, A. W. Ball, R. M. Taylor, Edith E. Hurly, Marrie H. Smith, W. S. Gasaway, Edna Spencer Shade, Walter Matthews, Nye N. Rambo, J. N. Prutzman, Charles E. Shade, Casper Sossong, Diedrich G. Logeman, Philip J. Dielman, Stephen T. Stuver, J. C. Wheeler, Joseph Bossi, M. E. Ball, Alfred Nordland, J. E. Ball, Lottie Crampton, G. W. Hart, D. A. Masterman, T. Hope, Fred Belohelan, John F. Martyer, Geo. L. Viscoute, Lillie Skidmore, H. A. Shaw, Parker Adams, Charles C. Ray, Joseph Crone, Mrs. M. J. Hewitt, A. F. Davis, Florence A. Brock, J. J. Foltz, C. E. Whiting, Chas. Putaturo, W. C. Hendrickson, Nelson R. Kyser, Philip Amo Ruso, Richard Hoard, Hans T. Hoff, Chas. Putaturo, Laura Dillor, William D. Birks, Perry Smith, Charles Johnson, Chester C. Foreman, Edward W. Soar, Herman Schroeder, Rhoderick D. Lytle, S. R. James, W. H. Dillon, Daisy B. Daly, Lissie Phelps, Theodore Hoff, Frank C. Daly, Wm. H. Sullivan, M. J. Sullivan, Robert A. Hutchison, J. W. Beckley, Otilie A. Beckley, Charles K. Ben-
nie, Joseph W. Mitchell, Alice L. Carroll, Mary J. Walker, Charles Leondor, Charles Londor, John E. Daly, Belle Bozarth, Frank Goldynski, Ed Edner, Catherine Harvey, Charles Daly, Amy Deacon, F. W. G. Sutherland, Pearl Daly, J. Cranens, H. Gunderson,

Miles D. Jameson, Grace Cone, Fred Woodhouse, Emma L. Newman, Emma L. Neuman, J. J. Hughes, Mrs. N. A. Pillsbury, Nora A. Pillsbury, J. A. W. Nelson, H. H. Pernoll, Daniel J. O'Shea, J. F. Quann, Niels Peter Christensen, Ida M. Jamison, William P. Courtney, Ernest R. Goldepp, Ernest G. Goldepp, Alton B. O'Brien, R. H. Angel, Edna Smith, Alex Bosko, Eugene C. Birke, Lula Dempsey, Thomas Pognozowski, J. Birks, Roland H. Birks, Aron D. Winner, William Nagle, Eugene Raisig, Lillian J. DeKeator, Thomas Storey, Henry Harbecks, Minnie Arnsbury, W. E. Payne, Frank Closner, Charles E. Arnsbury, Mabel E. Payne, Abe Davidson, Hugh A. Galbraith, T. V. Dempsey, Tracy Newman, Henry M. Stanley, Mary Allison, John G. Berg, Roswell G. Hibbard, Robert Daly, Frank B. Sibley, Robert Shelly, Albert Bozarth, Peter Stine, Nettie L. Robinson, Estella A. Robinson, Allison Davis, Alice Kinney, William Engels, Samantha J. Robinson, Albert A. Beihl, John C. Kinny, S. Ford Robinson, Regina May Davis, R. G. Robinson, Frank Federer, E. B. Federer, Joe Godlenski, Jr., Joe Godlenski, Enga Matilda Lean, J. Edwin Fults, J. F. Davis, Kinney D. Speer, H. C. Abbott, Ada V. Moreley, William Waugaman, Raymond Phelps, M. L. Zimmerman, Charles A. Bonnett, J. L. Shaffer, Frank L. Sadler, William W. Reiter, I. W. Scherich, N. G. Secord, P. G. Phelps, Celia Trainer, Annie Trainer, Bernard Trainor, Addie L. Grant, Fred Grant, E. J. Sidey, George Treimer, Albert Bosma, E. A. Nordling, Elizabeth E. Zahn, Laurell Augusta, A. C. Hanson, J. D.

Huntly, C. H. Cummings, E. G. Henkel, Carl S. Johnson, Charles H. Olney, Mrs. J. C. Whisker, J. C. Whisker, A. M. Wilson, Max Hoffman, Arthur M. Enney, Robert Wright, William Findley, Anselm Wolf, Richard Bennett, Louis Haase, H. E. McFall, G. C. Seebart, Aron Johnson, J. R. Holliday, John L. Johnson, Nels Haglund, Ole B. Hoven, William Dewar, William Dewan, Thomas Willis, N. A. Colby, F. M. Howery, Edward H. Fuller, Martin McDonough, Geo. Wagner, Clarence E. Burgess, C. J. Johnson, John Engstrom, Charles Kirkner, John Irving, Chester A. Cary, Thomas Stephens, Gustaf Benson, J. A. Perrin, John Johnson, John O. Helgersen, Juel B. Johnson, John Bryant, R. A. Fults, Ole Opsal, Wm. E. Clark, Carl E. Anderson, Ashmer Fulton, Lelli Opsal, Frank Sumption, Christoph Konrad Reese, H. J. O'Donnell, Michael Brossart, Ben Cisco, Bey G. Mease, B. Wolthius, Edwin Nicholi, Olive Spencer Nicolai, Paul Wolthius, Bernard McDermott, John A. Reils, Augustus C. Barry, Phaon A. Seidell, N. P. Frandsen, Fred Ludwig, Eliza S. Minner, Elmer E. B. Todd, Samuel Stewart, Fred B. Watke, Lester L. Nichols, Lester Nichols, John M. Fixa, Mrs. F. B. Watke, Josephine McDermott, John N. Westberg, S. E. Brown, John G. Arthur, Anna McDermott, Carice J. Phelps, James A. Davison, J. G. Phelps, C. E. Boatman, M. R. McLane, M. R. McLean, William T. Markhus, Amy Wilkinson, Orlando F. Trace, John R. Hayden, Thomas Conroy, Lewis E. Bergman, A. F. McNamara, E. T. Brough, Torwald T. Takerud, Ella C. Higgins,

Ella C. Higgenes, William Siegel, Edward Trainor, A. R. Warner, Gust Anderson, Bruno Kippels, H. N. Clarey, A. J. Warner, Edward Walline, Herman Kasperperson, Herman Kespelson, Fred Levitre, John Hagebak, Frank M. Wrabek, Oscar J. Thorssen, John F. Wrabek, Eben C. Rast, Paul E. Miller, John Shepherd, Stella Wilkinson, Martin Conroy, Estine B. Durdall, Harry B. Higgins, J. Johnston, Bernhard H. Anderson, Mrs. Sina Takerud, John C. Engen, Mary M. Miller, Katherine D. Cavanaugh, Harrison L. Hunt, G. W. Robinson, W. H. Robinson, Victor Malen, Richard F. Anderson, Joseph Ricker, Joseph Risher, Lewis Still, George Nicholson, Thomas McClure, James Wood, Perry Gearhart, Perry Geahart, J. W. Pratt, Louisa McDermott, O. W. Davis, Fred Bairstow, V. V. Barnes, Gus D. Thomas, Percy James Clibborn, Robert I. Austin, Robert J. Auston, W. Gordon Hatelly, Walter C. Hatelly, John C. Hatelly, John Tredwell, Otto J. Volkman, Henry Rust Boomer, Woodbury S. Agar, Horace G. Newhall, William C. Powers, Otto A. Sommer, Charles Berrall, A. B. Peterson, Delbert R. Ingwerson, Chris E. Risser, John G. Appenzeller, J. Thomas Merry, Harry E. Eckles, Hyland E. Wilson, William Buby, Wm. Ruby, George S. Law, Gilbert E. McClelland, Charles J. Barnard, John S. McCullagh, John Powell Thomas, Robert Powell Thomas, John O. Helgeson, Ole B. Haven, John A. Nelson, James Hetland, L. O. Ringdahl, Mat Kohler, Michael McManus, John Kuppe, Tarvald T. Takerud, Victor Malm, B. Wolthins, Paul Watkins, Annie Frainer, Celia Frainer,

Laura Dillon, Thomas Pogroszewski, Chas. E. Arnsbary, Minnie Amsbary, Robert Shelby, F. J. Quame, Reinhold F. Weirr, Charles E. Shude, Mrs. J. Hewitt, John F. Marzen, Geo. L. Viscomte, Walter Crane, J. O. Pratt, J. L. Huntley, Horace J. Newhall, Henry E. Eckles, and Retta E. Bishard,

Intervenors.

Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as trustee and Union Trust Company of New York individually and as trustee, the defendants in the above entitled cause; and

JOHN L. SNYDER, Julius F. Prah, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Frances S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock, defendants, cross-complainants in the above entitled cause, and

SIDNEY BEN SMITH, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neil, Alexander Fauske, Francis Wiest, Cordelia Michael,

John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin, defendants, cross-complainants in the above entitled cause, and

JOHN H. HAGGETT, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman, defendants, cross-complainants in the above entitled cause; and

WILLIAM F. SLAUGHTER, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 24th day of September, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

EDWARD D. TOWNSEND, Louis G. English, Ralph W. Core, and Edgar C. Holladay, interveners in the above entitled cause; and

JOHN BURBEE, Marion Smith, Charles Burbee, Oscar H. Sherman, and Charles Wiest, interveners in the above entitled cause; and

MILO F. DENNIS, and Leopold H. Dietz, interveners in the above entitled cause; and

FRANK TERRACE, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

CHARLES J. VANZILE, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in the intervention in this cause on the 23rd day of December, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

LUTHER E. TROWBRIDGE, intervener in the above entitled cause; and

GEO. W. WRIGHT, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright, and Joseph E. Wright, interveners in the above entitled cause; and
WILLIAM E. CARTER, Frank Carter, and William H. Prentice, interveners in the above entitled cause; and

ARTHUR L. GOLDER, George W. Trefren and Lewis J. Trefern, interveners in the above entitled cause; and

ELMER L. HANCOCK, and each and all of the persons whose names are specifically set forth in the above title to this cause; commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 8th day of February, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

ROBERT AISTROP, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude, and Frank A. Durrah, interveners in the above entitled cause; and WILLIAM McLEOD, Charles O. Anderson, John B. McLeod, John L. Morgan, A. N. Sarjent, J. W. Sarjent, Fred A. Sarjent, Travis Martin, J. W. McDonald, E. J. Pearl, Robert C. Martin, Susan Martin, Gertie Martin, Susie Martin, B. S. Martin, S. L. Overton, L. Overton, H. A. Foley, D. O. Cross, and R. C. Foley, interveners in the above entitled cause; and

B. W. NUNNALLY, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker, and O. N. Cranor, interveners in the above entitled cause; and

PAUL C. L'AMOREAUX, Albert E. Barkman,

Clyde M. Adair, Carrie M. Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman, and Rose L'Amoreaux, interveners in the above entitled cause; and

JOHN F. FOWLER, Fred B. Hussey, L. L. Scott, Eliza Scott, Geo. W. Scott, L. D. Beary, Glen W. Armour, W. J. Sweet, T. J. McMullen, Geo. S. Lindsey, L. F. Jones, A. Noble, H. N. Noble, H. C. Jones, A. A. Noble, Bertha V. Scott, Gertrude J. McMullen, Emeline S. Phelps, Jas. K. Phelps, Margaret B. Hallowell, C. W. Chapman, Orlando S. Phelps, Robert D. Shutt, Thos. J. Lillis, J. L. Wadsworth, Jessie P. Coffin, Vestel P. Coffin, R. W. Purdum, Lena A. Ingram, H. L. Ingram, Belle Peck, Floy McLeod, Sara Ingram, E. H. McKibbon, J. C. Perry, M. LeRoy White, Minnie M. Halliday, Margaret White, A. LaMare, J. J. Kobetich, John Alderson, Chris Knudsen, S. T. Farr, Chas. Carlyle, Clyde A. Gates, Henry Olmstead, B. Lindahl, Wm. O. Foote, Geo. Schlosser, John R. Read, A. O. Nelson, O. Erickson, T. L. Draper, Frank L. Draper, John Adamson, Leonard Anderson, A. M. Frankfurt, M. S. Langdon, John Olson, John Hedberg, Jas. DeRose, J. Frank LaRoe, Fanny M. LaRoe, Albert O. Skotterud, C. Wallgren, Emma C. Phelps, Arthur L. Dewey, H. H. Keith, C. Tuttle, H. A. Fisher, Lena M. Storla A. Johnson, Cora E. Ferrel, Van R.

Ferrel, Thos. C. Coffin, Geo. Harrison, Fred C. Smith, Walter Hatcher, O. W. Peterson, John Forsberg, Dan'l M. Smith, S. J. Morris, I. J. Edwards, Andrew Lindstrom, A. A. Johnson, I. Carpenter, T. A. McCormick, John C. Farley, John Fitzgerald, Wm. H. French, Geo. L. Scarlett, Michael Fitzgerald, Nils P. Lindgren, Hakan Lundgren, Emma E. Lundgren, Anna E. Lundgren, E. R. Redlich, Ida S. Bell, Milton S. Parrott, John Smedlund, F. E. French, Mary E. Wadsworth, Oscar Sandstrom, Frances A. Short, Albert F. Reed, Lewis E. Handley, William F. Hallowell, Beverly W. Coiner, Anna Arickson, M. H. Woolsey, Sr., E. G. Wollum, Annie Lemon, Martha J. Chapman, Robert Carlson, and Minette Johnson, interveners in the above entitled cause; and .

L. C. KEYLON, E. E. Keylon, C. S. Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphs Gaunt, and Anton Carlson, interveners in the above entitled cause; and

R. E. CAMERON, Everett B. Coffin, Ansel B. Hill, Arthur D. Bird, Elizabeth Robinson, W. J. H. Best, Frank J. Clements, Peter H. Ludwig, Hugh Mair, Anna M. Chase, D. H. Smith, Sarah J. Smith, Mary E. Ludwig, W. J. Hodder, W. B. Heffron, E. E. Christman, James E. Phillips, D. J. O'Connor, Thomas R. Williams, Zula D. Bird, William E. Donohue, James S. Chase, P. T. O'Connor, J. W. Braman, Julius J. Gregat, D. D. Whitcomb, L. F. Hatter, Gertrude Mae Schneider, Marcellus L. Whitcomb, Gilbert Thorson,

Fred Schneider, Jas. W. Curtis, Virgil W. Creech, Bertha Josephine Howe, James L. Hoadley, James O'Sullivan, Essie P. Mitchell, J. Y. Mitchell, Albert F. Hopstein, R. H. Holbrook, Edgar H. Blair, R. H. Wilhermsdorfer, Wm. H. Finck, J. T. Hatter, Wm. Curtis, J. A. Schoenberger, Kity V. Hogan, W. H. Hogan, Aaron L. Beers, John C. Kech, Estella A. Beers, Libbie D. Hagler, H. W. McFate, Henry R. Hale, Vincent J. Dermott, John M. Jackson, Andrew M. Thomas, B. Calling, Robert Dudgeon, Mabell F. May, Walter May, Lewis C. Hall, H. A. French, Henry C. Hill, C. C. Cease, Felix A. Rogers, Herman Meyer, Ray McFee, Mary A. Day, Anna E. Loupman, Francis O. Whealon, Bertha May Carr, John Mogus, Chester Kirkpatrick, Chas. Skuhra, F. E. Hammond, D. C. Hall, E. M. Bronilette, M. A. Sprague, J. F. Treen, J. E. Ambling, Jennie Rosencrans, Dorothea C. Kech, Preston H. Carr, and John H. Miller, interveners in the above entitled cause; and

CHARLES W. VARNUM, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Leabo, Mary E. Black, Arthur J. Plate, Flora E. King, Howard S. Robertson, W. E. Bowden, Frank B. Manzer, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson,

Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncy Thomas, and Adeline James, interveners in the above entitled cause; and

NICHOLAS HERRMAN, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketchum, G. A. Hutzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan, Hortence B. Lennan, P. G. Larson, William Hoeck, and Henry Hoeck, interveners in the above entitled cause; and

EDWIN F. ANDERSON, Emma K. Barr, Mabel A. Barr, John Boeck, Wardel Boeck, G. V. Booth, Anna B. Booth, Joseph W. Brady, William A. Boze, Eric Q. Brainard, John Charles Brodie, George Brunt, J. R. Buck, George A. Buck, Thomas Butler, F. M. Bybee, Herbert W. Calkins, Ben W. Calkins, N. W. Calkins, Nellie B. Calkins, Etta S. Clear, M. H. Coffin, Edna Coffin, Mark Coffin, Mary A. Coffin, Elza Davis, George J. Davis, Thea Falk, John C. Filer, Mary G. Filer, Frank C. Irons, Jacob H. Keefer, R. D. Leach, Lillian E. Leach, Andrew C. Leach, Amelia Lind, M. E. Longfellow, W. L. McCaslin, Ira L. Macomber, Harry J. Marcus, Elias D. Marquand, D. G. Martin,

Helen Martin, Frank J. Miller, George Miller, George W. Mills, Fred Mosely, Althea Munroe, Orr W. Noble, William S. Northrup, David R. Page, C. M. Paxton, Helen A. Payne, Alice J. Pelot, Henry Rasmussen, Elmer Rasmussen, Irene K. Rodgers, Napoleon B. Rodgers, William D. Rogers, Frank O. Schramm, A. J. Seckner, Gertrude Seckner, George E. Smith, Dallas W. Spangler, D. W. Stainbrook, Anna Steensland, Frank R. Storm, Norbert H. Storm, L. B. Taylor, Joseph Thompson, C. H. West, J. Ernest White, Daniel A. Wisecup, W. W. Calkins, Etta S. Clarr, Marg G. Filer, Guy E. Winzer, and Montello Gray, interveners in the above entitled cause; and

FRED J. GOULD, Beverly B. Deems, George Daniel, W. H. Harris, John D. Sullivan, Daniel S. Green, Adolph O. Keller, Peter Haupt, Lillian M. Hanley, Tobias S. Miller, Ezra H. Stafford, Peter T. Barrett, William A. McAtee, Joseph V. Barrett, George B. Reynolds, Massey Wilson, Henry Schurmann, Edwin B. Schurman, Adolph G. Enderly, Flora A. Branstetter, William D. Burhans, Jacob J. Koenigsmark, Florence E. Stafford, Fannie A. Stafford, Edwin M. Stafford, Justus H. Hohl, Louis J. Bechtold, John C. Greulich, A. M. Scheel, Effie Grace Sumney, Herman C. Kraleman, J. W. Vandolah, Ward D. Flinn, Joseph A. Stewart, C. W. Cooper, Hoxie Cooper, Roxie Cooper, Flora Beardsley, Raymond M. Beardley, James A. Owens, Clinton S. Braden, S. M. Braden, Sears Lehman, Garfield J. Tansing, L. G. Davis, Robert J. Hood,

Robert Rives, J. B. Leemon, Helen H. Dearborn, W. B. Dearborn, W. E. Dearborn, David O'Neal, Leonard P. Lockwood, George K. Boyd, Frank J. Smith, Estella J. Smith, John D. LaCroix, Benjamin F. Wheeler, F. A. Gooch, Mrs. M. O. Woodruff, Charles P. Howland, James Lacy, A. L. Gibbs, Paul Vinyard, William H. Lockwood, Allen W. Thomas, and E. G. Bentley, interveners in the above entitled cause; and

ABRAM B. HORNER, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abraham B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 15th day of December, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

GEORGE B. BOTHWELL, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 6th day of October, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

HERVEY L. KEYES, Chester H. Thomson, Chester H. Thomson, Lynn S. Carter, Byron D. West,

George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arendonk, Ira Lubbers, Reinier Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Heunink, Bertha Moe Seaver, and Elmer H. Ruslink, interveners in the above entitled cause; and

MARVIN P. ALFORD, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 14th day of February, 1910, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

ALBERT BOZARTH, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court,

filed their joint complaint in intervention in this cause, on the 15th day of March, 1910, and who are too numerous to specifically name again herein, interveners in the above entitled cause.

And they and each and all of the aforesaid defendants, defendants cross complainants, and interveners in the above entitled cause, conceiving themselves aggrieved by the judgment and decree made and rendered in the above entitled court in the above entitled cause, and entered herein on the first day of July, A. D. 1913, at the March, 1913, term of said court, in favor of the complainant in the above entitled cause and against each and all of the said defendants therein, and against each and all of the said defendants cross complainants therein, and against each and all of the said interveners therein, wherein and whereby, among other things, it was and is adjudged and decreed that all of those certain lands and estates in lands described in the said judgment and decree, have become and now are forfeited to, and the title to all of said lands and estates in lands has reverted to, and now is revested in, the United States of America, and all of said lands and estates in lands now are the absolute property of the United States of America, free from any and all claim or claims of right, title, interest or lien in, to or upon the same or any part thereof, by or in favor of the defendants, cross complainants and interveners herein or either or any of them, or any party or parties claiming under them or either or any of them; and

WHEREIN AND WHEREBY, among other things, it was and is further adjudged and decreed that the title of the United States of America to all of said lands and estates in lands be, and the same hereby is quieted and confirmed, and particularly as to any and all claim or claims of right, title, interest or lien, to or upon the same or any part thereof, by or in favor of the defendants, cross complainants and interveners herein, and each and every of them, and each and every party or parties claiming under them or either or any of them; and

WHEREIN AND WHEREBY, among other things, it was and is further adjudged and decreed that each and all of the defendants, cross complainants and interveners herein, and their respective officers and agents be, and they and each of them hereby are forever enjoined and restrained from in any manner claiming all claim or claims of right, title, interest or lien in, to or upon the aforesaid lands and estates in lands, or any part thereof; and from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein; and from negotiating, executing or recording any document or instrument, and from doing any other act or thing, which shall in any manner affect or encumber the title to said lands or estates in lands, or any part thereof; and from going upon said lands or any part thereof; and from cutting, removing or in any manner using or injuring any of the timber or other natural products thereof; and from

in any manner committing trespass upon said lands or any part thereof; and from in any manner using or interfering with said lands and estates in lands or any part thereof, or the title or possession thereof; and from contracting with, inviting, inducing, or in any manner whatsoever permitting others to do any of the things aforesaid; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that the said judgment and decree shall not apply and is not intended to apply to reservations or exceptions of right-of-way for the main track of the railroad of the Oregon & California Railroad Company as actually constructed, established and in operation at the date of the said decree; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that the defendants Oregon and California Railroad Company, Stephen T. Gage and Union Trust Company shall within sixty days from the date that any of said lands shall revert to said defendants, or either of them as in said decree mentioned, execute and file with the clerk the above entitled court a deed of conveyance, in due and legal form, conveying and confirming the said lands unto the United States of America, free from any and all claim or claims of right, title, interest or lien in, to or upon the same, or any part thereof, in favor of said defendants, or either or any of them. And in the event that said defendants, or either or any of

them, shall fail to execute and file any such deed or deeds of conveyance as aforesaid, the said judgment and decree shall operate, and shall have the same force and effect, as such deed or deeds of conveyance; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that there be excepted from the operation of said judgment and decree all right-of-way and station grounds as established and in actual use at the date of said judgment and decree in the operation of the railroad of the defendant Oregon and California Railroad Company; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that within sixty days from the date of said judgment and decree the defendants, Oregon and California Railroad Company, Stephen T. Gage, and Union Trust Company shall execute and deliver to the Clerk of the above entitled court a deed of conveyance in due and legal form, conveying and confirming unto the United States of America all of the said lands situated in the State of Washington, free and clear from any and all claim, or claims of right, title, interest or lien, in, to or upon the same, or any part thereof, in favor of the defendants herein or either or any of them, which said lands are particularly described in said judgment and decree; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that each and all of the cross complaints and bills and peti-

tions in intervention be and they are dismissed for want of equity with costs in favor of the prevailing parties, respectively, to be thereafter taxed; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that the complainants' prayer for an accounting be and the same is denied; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that the complainant, the United States of America have and recover from the defendants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company its lawful costs and disbursements herein, and that execution issue therefor,

Do and each of them does hereby jointly and severally appeal from the said judgment and decree and from the whole and from each and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

And the said Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company of New York, individually and as trustee, the said defendants and each and all of them in the above entitled cause, and the said defendants cross complainants and each and all of them in the above entitled cause and the said interveners and each and all of them in the above

entitled cause, file herewith their and each of their assignment of errors, asserted and intended to be urged upon this, their said appeal.

And the said Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, of New York individually and as trustee, the said defendants, and each and all of them, in the above entitled cause, and the said defendants cross complainants, and each and all of them, in the above entitled cause, and the said interveners, and each and all of them, in the above entitled cause, pray that this, their petition for said appeal, and their said appeal may be allowed, and that citation issue herein as provided by law, and that a transcript of the record, proceedings and papers upon which said judgment and decree was made and entered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and also that an order be made fixing the amount of security which the said defendants, the said defendants cross complainants and the said interveners shall give and furnish upon this their said appeal, in order to supersede, suspend and stay the said judgment and decree and every part thereof, and that upon the giving of such security the said judgment and decree, and every part thereof, and execution thereon, be superseded, suspended and stayed until the final determination of this cause on appeal.

And your petitioner will ever pray.

PETER F. DUNNE,
WM. D. FENTON
and JAMES E. FENTON,
WM. F. HERRIN,
of Counsel.

Solicitors and Attorneys for said defendants
Oregon & California Railroad Company,
Southern Pacific Company and Stephen T.
Gage, individually and as trustee.

MILLER, KING, LANE
and TRAFFORD, DOLPH,
MALLORY, SIMON &
GEARIN,

JOHN C. SPOONER,
JOHN M. GEARIN,
of Counsel.

Solicitors and Attorneys for said defendant,
Union Trust Company of New York, in-
dividually and as trustee.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

**SHEPARD &
BURKHEIMER,**

Successors to

**SHEPARD & FLETT;
JOHN E. BURKHEIMER,
CHARLES E. SHEPARD,
C. I. LEAVENGOD,
JNO. MILLS DAY,**

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,
LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervenor Luther E. Trowbridge.

A. C. WOODCOCK,
GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,**JNO. MILLS DAY,**

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,**LEWIS C. GARRIGUS,**

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William McLeod, Charles O. Anderson, John B. McLeod, John L. Morgan, A. N. Sarjent, J. W. Sargent, Travis Martin, Fred A. Sarjent, J. W. McDonald, E. J. Pearl, Robert C. Martin, Susan Martin, Gertie Martin, Susie Martin, B. S. Martin, S. L. Overton, L. Overton, H. A. Foley, D. O. Cross, and R. C. Foley.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COUNER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thomson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, Chester H. Thomson, Chas. B. Winchester, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

Which petition for appeal, with order therein, was duly entered by the said court on August 29, 1913, in the following words, to-wit:

The within petition for allowance of appeal is granted, and the said appeal is allowed as prayed, upon the giving of a bond in the sum of One Hundred Thousand Dollars (\$100,000), to be approved by this court, which bond shall operate as a supersedeas from the date of its approval, except as to the injunctive portion of said decree.

Dated this 29th day of August, 1912.

CHAS. E. WOLVERTON,

Judge.

District of Oregon,)
) ss.
County of Multnomah.)

Due service of the within Petition for Appeal is hereby accepted in Multnomah County, Oregon, this 29th day of August, 1913, by receiving a copy thereof duly certified to.

JAS. C. McREYNOLDS, Atty. Genl.

B. D. TOWNSEND, Spl. Asst. to Atty. Genl.

By GLENN E. HUSTED,

Spl. Asst. to Atty. Genl.,

Attorney for Complainant.

CLARENCE L. REAMES,

United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon,
Clerk United States District Court, by V. Johnston,
Deputy.

And on August 29, 1913, there was duly filed in said court Assignment of Errors of the defendant Union Trust Company, individually and as trustee, in words and figures as follows, to-wit:

(TITLE)

DEFENDANT UNION TRUST COMPANY'S
(INDIVIDUALLY AND AS TRUSTEE)
ASSINGMENT OF ERRORS.

The defendant, Union Trust Company, of New York, individually and as trustee, complains of errors in the proceedings in this case, in the District Court of the United States, for the District of Oregon in the above entitled cause, and in the decision and decree rendered, made and entered therein, and assigns the following as the errors complained of:

1.—The Court erred in holding that the United States, complainant herein, was entitled to the relief prayed for in its complaint herein, or to any relief, and in not holding that the said complaint of said complainant should be dismissed.

2.—The Court erred in holding that the complainant had any right, title or interest in or to the lands described in the decree herein, or any part thereof.

3.—The Court erred in holding that the complainant is the owner in fee simple, or in the possession of said lands, or any part thereof, or entitled to the possession of the same, or any part thereof.

4.—The Court erred in holding that the defendant, the Oregon and California Railroad Company, was not the owner in fee simple and in the possession, and entitled to the possession of said lands, and the whole thereof.

5.—The Court erred in holding that the allegations in said bill of complaint were sustained by the evidence, and in not holding that said bill should be dismissed.

6.—The Court erred in holding that the lands or any thereof, described in the decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any thereof, to the complainant.

7.—The Court erred in holding that the lands and estates in lands in the said decree described, either in whole or in part, have become or now are forfeited to, or that the title to the same or any part thereof, has reverted to and now is revested in the United States of America, or that the same or any part thereof now are the absolute property of the United States of America, or are free from any or all claim or claims of right, title or interest or lien in, to, or upon the same or any part thereof by or in favor of this defendant, individ-

ually or as trustee, or the defendant Oregon and California Railroad Company, or the defendant Southern Pacific Company, or the defendant Stephen T. Gage, individually or as trustee, or any party or parties claiming under them, or either or any of them.

8.—The Court erred in holding that the title of complainant to the said lands, or any thereof, should be quieted.

9.—The Court erred in holding that the title of the United States of America to all or any of said lands or estates in lands be or is by said decree quieted or confirmed, or be or is so quieted or confirmed, particularly as to any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, by or in favor of this defendant, individually or as trustee, or the said Oregon and California Railroad Company, or the said Southern Pacific Company, or the said Stephen T. Gage, individually or as trustee, or each or every party or parties claiming under them, or either or any of them.

10.—The Court erred in holding that complainant was entitled to recover its costs and disbursements herein, and that a decree should be entered to that effect.

11.—The Court erred in holding that the complainant herein was or is entitled to any injunction or restraining order in this cause.

12.—The Court erred in holding that this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or the officers or agents of them, or any or either of them, be, or what they, or any or either of them by said decree are or is forever, or at all, enjoined or restrained from claiming or asserting, or from claiming or asserting in any manner any right, title, interest or lien in, to, or upon the said lands, or estates in lands, or any part thereof, or from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein, or from negotiating, executing, or recording any document or instrument, or from doing any other act or thing which shall in any manner affect or encumber the title to said lands or estates in lands or any part thereof, or from going upon said lands, or any part thereof, or from cutting, removing or in any manner using or injuring any timber or other natural products thereof, or from committing in any manner trespass upon said lands, or any part thereof, or from using or interfering with in any manner said lands or estates in lands, or any part thereof, or the title or possession thereof, or from contracting with, inviting or inducing, or permitting, or in any manner whatsoever permitting others, or any party to do any of the things aforesaid.

13.—The Court erred in holding as to all or any lands which may hereafter revert, as in paragraph IV

of said decree set forth, to this defendant, individually or as trustee, or to said Oregon and California Railroad Company, or to said Southern Pacific Company, or to said Stephen T. Gage, individually or as trustee, that this defendant, or the said Oregon and California Railroad Company, or the said Stephen T. Gage, or any or either of them, shall within sixty days, or any other period of time, from the date that any of said lands shall so revert to said defendants, or any or either of them, or at all, execute or file with the clerk of said court, or otherwise, or at all, any deed of conveyance in due or legal form, or at all, conveying or confirming unto the United States of America all or any of said lands, free from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or either or any of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed or deeds of conveyance, said decree shall operate or shall have the same force or effect as such deed or deeds of conveyance.

14.—The Court erred in holding that within sixty days or any other time, from the date of said decree, or otherwise or at all, this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, or any or either of them, shall execute or deliver to the clerk of said court, or otherwise, or at all, a deed of conveyance in due or legal form, or at all, conveying and confirming unto the United States of America,

12.—The Court erred in holding that this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or the officers or agents of them, or any or either of them, be, or what they, or any or either of them by said decree are or is forever, or at all, enjoined or restrained from claiming or asserting, or from claiming or asserting in any manner any right, title, interest or lien in, to, or upon the said lands, or estates in lands, or any part thereof, or from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein, or from negotiating, executing, or recording any document or instrument, or from doing any other act or thing which shall in any manner affect or encumber the title to said lands or estates in lands or any part thereof, or from going upon said lands, or any part thereof, or from cutting, removing or in any manner using or injuring any timber or other natural products thereof, or from committing in any manner trespass upon said lands, or any part thereof, or from using or interfering with in any manner said lands or estates in lands, or any part thereof, or the title or possession thereof, or from contracting with, inviting or inducing, or permitting, or in any manner whatsoever permitting others, or any party to do any of the things aforesaid.

13.—The Court erred in holding as to all or any lands which may hereafter revert, as in paragraph IV

of said decree set forth, to this defendant, individually or as trustee, or to said Oregon and California Railroad Company, or to said Southern Pacific Company, or to said Stephen T. Gage, individually or as trustee, that this defendant, or the said Oregon and California Railroad Company, or the said Stephen T. Gage, or any or either of them, shall within sixty days, or any other period of time, from the date that any of said lands shall so revert to said defendants, or any or either of them, or at all, execute or file with the clerk of said court, or otherwise, or at all, any deed of conveyance in due or legal form, or at all, conveying or confirming unto the United States of America all or any of said lands, free from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or either or any of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed or deeds of conveyance, said decree shall operate or shall have the same force or effect as such deed or deeds of conveyance.

14.—The Court erred in holding that within sixty days or any other time, from the date of said decree, or otherwise or at all, this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, or any or either of them, shall execute or deliver to the clerk of said court, or otherwise, or at all, a deed of conveyance in due or legal form, or at all, conveying and confirming unto the United States of America,

all or any of said lands situated in the State of Washington, free or clear from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or any or either of them, or otherwise, or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed of conveyance, said decree shall operate or shall have the same force or effect as such deed of conveyance.

15.—The Court erred in holding that the above mentioned defendant, Union Trust Company, has no lien on said lands or any part thereof, and in holding that the lien of said defendant evidenced by deed of trust of date July 1, 1887, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

16.—The Court erred in holding that the above mentioned defendant, Stephen T. Gage, as trustee, or the said Southern Pacific Company, had no lien on said lands or any part thereof, and in holding that the lien of said defendant, Stephen T. Gage, as trustee, evidenced by deed of trust of date June 2, 1881, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

17.—The Court erred in holding that this defendant,

as trustee for the owners and holders of bonds issued under and by virtue of trust mortgage of July 1, 1887, was not entitled to the rights, or to all or any of the rights of an innocent purchaser for value.

18.—The Court erred in holding that whatever interpretation might be given to the proviso touching actual settlers of said act of April 10, 1869, or whether the same created a condition subsequent or not, this defendant, Union Trust Company of New York, was not entitled to a lien upon the right of way and the whole land grant of the said act of July 25, 1866, as security for the sum of twenty million dollars, as provided in said mortgage of July 1, 1887, and in holding that this defendant was not entitled to have said lien impressed upon said right of way and said entire land grant to be satisfied first and before forfeiture or reversion to the complainant, or said United States of America, if forfeiture or reversion should be decreed.

19.—The Court erred in holding that the right to forfeiture for breach of condition subsequent is not a right that may be waived, and in holding that in this case, as to this defendant, said right, if it ever existed, was not waived by said complainant and said United States of America, and in holding that said complainant and said United States of America is not estopped to allege a breach of such condition or to pray or have forfeiture as against this defendant.

20.—The Court erred in holding that the paramount

and primary purpose of Congress touching the land grant under the act of Congress of July 25, 1866, mentioned in the bill of complaint and entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," or any amendment thereof, is expressed by the proviso as to sale to actual settlers, contained in the act of Congress of April 10, 1869, referred to in said bill, and entitled "An act to amend an act entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon.'"

21.—The Court erred in holding that the paramount and primary purpose in making the said land grant was other than to aid in the construction of a railroad, as expressed in the said act of July 25, 1866.

22.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of May 4, 1870, mentioned in the bill of complaint, and entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," was other than to aid in the construction of a railroad as expressed in said last mentioned act.

23.—The Court erred in holding that this defendant, individually or as trustee, or said Oregon and Cali-

foria Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or any or either of them, had at any time violated any provision of said act of July 25, 1866, or of said act of April 10, 1869, or of said act of May 4, 1870, or more particularly any clause or provision either in said act of April 10, 1869, or in said act of May 4, 1870, relative to actual settlers.

24.—The Court erred in holding that in respect to the said land grants, or either of them, there had been any application thereof by the grantees of the same, or either of them, or their successors in interest, or by this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or any or either of them, other than in fulfillment of and compliance with the paramount and primary purpose of Congress in making the said land grants, or either of them.

25.—The Court erred in holding that the application of the land grant under the said act of July 25, 1866, denominated by way of distinction the East Side Grant, to the construction of the railroad contemplated therein, by way of a mortgage or deed of trust of said land grant to raise funds, or refund the same, for the construction of such railroad, was a violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

26.—The Court erred in holding that the application of the said East Side Grant to the construction of the railroad contemplated in said act of July 25, 1866, by way of a deed of trust or mortgage of said land grants to raise funds or to refund the same, for the construction of such railroad, was in subjection and subordination to, and restricted by, the proviso in said act of April 10, 1869, relative to actual settlers.

27.—The Court erred in holding that any sale or sales of lands forming part of said East Side Grant, pursuant to the mortgage or mortgages, deed, or deeds of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness, so secured or refunded, constituted any departure from or violation of any purpose, or enactment of Congress in the premises, or were other than a fulfillment of and compliance with, the policy, intent and legislation of Congress.

28.—The Court erred in holding that the lands of said East Side Grant, or any part thereof, had been sold in breach or violation of any provision of the said act of July 25, 1866, or of said act of April 10, 1869.

29.—The Court erred in holding that the grantee of said East Side Grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage,

individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same, or any part thereof, in breach of any act of Congress or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress in the premises.

30.—The Court erred in holding that the application of the land grant under the said act of May 4, 1870, denominated by way of distinction, the West Side Grant, to the construction of the railroad therein contemplated, by way of a mortgage or deed of trust of said grant to raise funds, or to refund the same, for the construction of such railroad was in breach of any provision of said last mentioned act, or in violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

31.—The Court erred in holding that the application of the said West Side Grant to the construction of the railroad contemplated in said act of May 4, 1870, by way of a mortgage or deed of trust of said grant to raise funds, or refund the same, for the construction of such railroad, was in subjection and subordination to and restricted by anything in said last mentioned act as to actual settlers.

32.—The Court erred in holding that any sale or

sales of lands forming part of said West Side Grant, under any mortgage or deed of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with the policy, intent and legislation of Congress.

33.—The Court erred in holding that the lands of said West Side Grant, or any part thereof, had been sold in breach of any provision of the said act of May 4, 1870.

34.—The Court erred in holding that the grantee of said West Side Grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same or any part thereof, in breach of said act of May 4, 1870, or otherwise than in fulfillment of and compliance with the policy intent and legislation of Congress, in the premises.

35.—The Court erred in not holding that the proviso in the Act of Congress of April 10, 1869, to-wit,

"That the lands granted by the act aforesaid shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and for a price not exceeding two dollars and fifty cents (\$2.50) per acre," is void for uncertainty.

36.—The Court erred in not holding that the said proviso is a purely directive, regulative covenant.

37.—The Court erred in not holding that the said proviso is unenforceable by the United States, because its interest is purely nominal.

38.—The Court erred in not holding that the said granted lands, East Side and West Side, both or either, are timbered in character and were and are not capable of actual settlement.

39.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been done away with by the act of Congress of June 25, 1868, mentioned in the bill of complaint and entitled, "An act to amend an act, entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon.'"

40.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been waived by said act of June 25, 1868.

41.—The Court erred in holding that said provision

as to the filing of assent had not been repealed by said act of June 25, 1868.

42.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868.

43.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the designation of the Oregon Central (East Side) Railroad Company, by the legislature of Oregon, on October 20, 1868.

44.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the construction work, previous thereto, of the Oregon Central (East Side) Railroad Company, and with the subsequent designation of said last named company by the legislature of Oregon, on October 20, 1868.

45.—The Court erred in holding that said provision as to the filing of assent attached itself to any right, title or interest of the grantee of said East Side Grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or any or either of them, by or through any estoppel, consent, legislative obligation, covenant, condition or otherwise,

because of the action of said East Side Company in filing written assent on June 30, 1869, or at any other time, or in taking any step or steps to bring the attention of Congress to the matter of such assent, or to procure any action by Congress in that behalf, if any such step or steps were taken, or in applying to Congress, if such application there was, for leave to file such assent, or otherwise, or at all.

46.—The Court erred in holding that said provision as to the filing of assent in respect to said East Side Grant, was a condition, either precedent or subsequent.

47.—The Court erred in holding that the proviso in respect to settlers in said act of April 10, 1869, was a question in the case requiring judicial determination.

48.—The Court erred in holding that any imposition by Congress under said proviso of any qualification, restriction, limitation, or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity.

49.—The Court erred in holding that any imposition by Congress under said proviso, of any qualification, restriction, limitation or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity, regard being had to the rights of the California and Oregon Railroad Company, a California corporation, under said act of July 25, 1866, and to the vested interests, accruing

under said act to said last named corporation in virtue of its acceptance of said act, and its conduct, construction and expenditures thereunder and pursuant thereto.

50.—The Court erred in not holding that the act of Congress of July 25, 1866, pleaded in the bill of complaint in this cause, was and is a single grant, of the lands described therein, to the California and Oregon Railroad Company organized under the laws of California and to such company organized under the laws of Oregon as the legislature of the latter state should thereafter designate for the purpose of aiding the said companies in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon.

51.—The Court erred in not holding that the said grant under said act of Congress was entire and not severable, and upon the filing of assent to said act in the Department of the Interior by either of said companies within one year after the passage thereof and the completion of the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, the said act became operative and vested in the company complying therewith an interest in the entire grant.

52.—The Court erred in not holding that the California and Oregon Railroad Company filed its assent to said Act in the Department of the Interior within one year after the passage thereof and completed the first

section of twenty miles of said railroad and telegraph line within two years after the passage thereof, and that thereupon said act became operative and vested in said California and Oregon Railroad Company an interest in the entire grant.

53.—The Court erred in not holding that when the California and Oregon Railroad Company filed its assent to said Act of Congress of July 25, 1866, in the Department of the Interior within one year, and completed the first section of twenty miles of said railroad and telegraph line, within two years after the passage of the said act, Congress was without lawful authority to annex a new condition, by amendment or otherwise, to the land-grants.

54.—The Court erred in not holding that had the legislature of Oregon failed to designate a company to construct said railroad and telegraph line in Oregon, the California and Oregon Railroad Company, upon compliance with the provisions of said act of July 25, 1866, had the right and it was authorized by said act to construct the entire railroad and telegraph line from the Central Pacific in California to Portland in Oregon and thereby earn, and become entitled to, the entire land grant under said act.

55.—The Court erred in not holding that the said act of Congress of July 25, 1866, authorized the California and Oregon Railroad Company to construct any part or all of the said railroad and telegraph line pro-

vided the legislature of Oregon failed to designate a company as provided by said act, or such company failed to file its assent to said act.

56.—The Court erred in not holding that the said act of Congress of July 25, 1866, was, as to said California and Oregon Railroad Company, a grant in presenti, of the odd-sections of lands within the limits therein specified, along the line of said railroad from the Central Pacific Railroad in California to Portland in Oregon.

57.—The Court erred in not holding that at the time of the passage of the act of Congress of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had fully complied with all of the terms of said act of July 25, 1866, as amended by the act of June 25, 1868, which were required to be performed up to the time of the passage of said act of April 10, 1869.

58.—The Court erred in not holding that prior to the passage of said act of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had acquired a vested interest in the whole of the lands granted by said act of July 25, 1866, and the said act of April 10, 1869, annexing a condition to the entire grant was void.

59.—The Court erred in not holding that the said grant under the said act of Congress of July 25, 1866, being single and entire and said act of April 10, 1869,

being void as to the California and Oregon Railroad Company, as to the whole of said grant, it is void as to the portion of said grant situated in the State of Oregon.

60.—The Court erred in not holding that the said act of Congress of April 10, 1869, was void in that it requires that the interest acquired by the California and Oregon Railroad Company in the lands granted by said act of July 25, 1866, shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and at a price not exceeding two dollars and fifty cents (\$2.50) per acre, as a condition of an extension of time to the company designated by the legislature of Oregon, to file its assent to said act of July 25, 1866.

61.—The Court erred in not holding that the said act of Congress of July 25, 1866, did not require that both of the companies mentioned therein should file assent to said act or construct said railroad and telegraph line, but said act was satisfied and became operative if either of the said companies filed its assent in the Department of the Interior within one year, after the passage of said act, and completed construction of its said railroad and telegraph line within the time provided in said act and the act of June 25, 1868, amendatory thereof.

62.—The Court erred in not holding that after performance by the said California and Oregon Railroad

Company, of all conditions imposed by the act of July 25, 1866, and the same as amended by the act of June 25, 1868, required to be performed prior to April 10, 1869, it acquired and possessed a vested right in the whole of said land grant and Congress was thereby deprived of the power and was without authority to "add, to, alter, amend or repeal" the said act of July 25, 1866, in any way that would tend to embarrass, delay or defeat the construction of either or any portion of said railroad and telegraph line, or in any way that would tend to interfere with any vested rights in said grant.

63.—The Court erred in holding that the said proviso in respect to settlers in said act of April 10, 1869, was a condition precedent.

64.—The Court erred in holding that the said proviso in said act of April 10, 1869, was a condition subsequent.

65.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of said proviso.

66.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a conditionn precedent.

67.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition subsequent.

68.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of any provision in said act of May 4, 1870, touching sales to actual settlers.

69.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect either to said East Side grant, or to said West Side grant, or any part thereof.

70.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect to either of said grant, in any re-entry for breach of condition, or legislature equivalent thereof, or in any legislative declaration of forfeiture.

71.—The Court erred in holding that there was jurisdiction in the Court on the equity side of the cause or subject matter of this suit, and in not dismissing the bill of complaint.

72.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture of said East Side grant for the breach of an assumed condition subsequent, if such breach there was, in said proviso of said act of April 10, 1869.

73.—The Court erred in holding that there was jurisdiction in the Court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

74.—The Court erred in holding that the complainant was entitled to a decree quieting its title to either of said grants against this defendant, individually or as trustee, said Oregon and California Railroad Company, said Southern Pacific Company, and said Stephen T. Gage, individually or as trustee, or any or either of them, or any party to the cause.

75.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company, or its grantees, if such there were, did not have the legal title to such grants.

76.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the complainant was in possession of the said grants, or either of them, or any part thereof; and in holding that the Oregon and California Railroad Company, or its grantees, if such there were, did not have the possession of the same.

77.—The Court erred in holding, as foundation for a suit by complainant to quiet its title to the said grants, or either of them, or any part thereof, that the same had not been reduced to possession and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

78.—The Court erred in holding that at the time

of the filing of the bill of complaint herein and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company, or its grantees, if such there were, did not have possession of the said grants, or either of them.

79.—The Court erred in not holding that at the time of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company had legal title and the possession of all the lands of which forfeiture is sought by said bill of complaint against this defendant, individually and as trustee, and said Oregon and California Railroad Company and said Southern Pacific Company and against said Stephen T. Gage, individually and as trustee.

80.—The Court erred in holding that the said proviso of said act of April 10, 1869, or any provision of said act of May 4, 1870, touching actual settlers in anywise or at all affected the title to the lands, or any part thereof, either of said East Side grant or of said West Side grant.

81.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in receipt to said East Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

82.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to the said West Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

83.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture, had not been acquiesced in by Congress and complainant.

84.—The Court erred in holding, on the assumption of a condition subsequent in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been acquiesced in by Congress and complainant.

85.—The Court erred in holding on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to the said East Side grant, that as to any breach of such assumed condition subsequent, or assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

86.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side grant, that as to any breach of such assumed condition subsequent, or any assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

87.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acquiescence in the many deeds of conveyance made by the defendant, Oregon and California Railroad Company, with the knowledge of Congress and complainant.

88.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acceptance and use of the said railroad.

89.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by annual issuance of patents to said lands from 1871 down to 1906.

90.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by the passage by Congress of the Forfeiture Acts of January 31, 1885, and September 29, 1890.

91.—The Court erred in not holding that this suit as to all lands patented prior to October, 1902, was and is barred by the Acts of Congress of March 3, 1891, and March 2, 1896.

92.—The Court erred in not holding that all causes of action presented by the bill of complaint herein are barred by laches and the Statute of Limitations.

93.—The Court erred in holding that the primary and controlling purpose of Congress in the act of July 25, 1866, and acts amendatory thereof, was to provide for the sale of the granted land to actual settlers, or in that behalf, that said lands were capable of actual settlement.

94.—The Court erred in not holding that the primary object of the act of April 10, 1869, was to extend the time for the construction of the said railroad and not to impose a condition or trust upon the grant already made.

95.—The Court erred in not holding that the proviso

for the sale of the lands granted to actual settlers, contained in the act of April 10, 1869, and the provision as to settlers in the act of May 4, 1870, are, and each of them is, void because the same is repugnant to the grant and tends to defeat and destroy the primary purpose and intent of Congress in making the said grants in aid of the construction of the said railroads and telegraph lines.

96.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said lands to actual settlers, was intended only to apply to such actual settlers as were, at the dates of the acts of July 25, 1866, and May 4, 1870, in actual possession of said portions of said granted lands or who might become actual settlers before the filing of the map of survey.

97.—The Court erred in not holding, on the assumption that the said provision in the said acts of April 10, 1869, and May 4, 1870, for the sale of said granted lands to actual settlers, were conditions subsequent, that Congress and complainant waived any breach of said provisions or right to forfeiture by:

(a) Permitting the said grants to be administered by the grantees and their successors for a period of over thirty-eight years prior to the passage of the joint resolution of April 3, 1908, and prior to the commencement of this suit on the 4th day of September, 1908, with the knowledge of Congress and complainant; and

(b) The passage of the act of June 25, 1868; and

(c) The passage of the forfeiture act of January 31, 1885; and

(d) The repeated refusal of Congress to pass any other forfeiture act than the general statute on that subject; and the forfeiture act of September 29, 1890; and

(e) The continuous and regular issuance by complainant of patents to said granted lands.

98.—The Court erred in not holding, on the assumption that the act of July 25, 1866, constituted and was a single grant, and so as to the West Side grant, both or either, that a waiver on the part of Congress and the complainant of any breach of the proviso or clause as to sales to settlers in said grants, or either of them, and of forfeiture on account thereof, as to a portion of the same, with knowledge on the part of Congress and the complainant, was a waiver as to the entire grants, both or either.

99.—The Court erred in not holding, on the assumption that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to sales of said granted lands to actual settlers, are conditions subsequent, that each of said conditions subsequent is void for the following reasons:

(a) It is retroactive and its effect would be to divest the title of defendant, Oregon and California Railroad Company; and

(b) It is in restraint of and prohibits alienation except as to a particular class of persons; and

(c) The restraint on alienation is inconsistent with the purpose of the grant and the estate granted; and

(d) The said condition does not fix a definite time within which any of the lands shall be sold to actual settlers; and

(e) The said conditions does not define who is an actual settler; and

(f) The sale of said lands is wholly dependent upon there being actual settlers thereon, an uncertain event, and the restraint contained in said provision amounts to a perpetuity; and

(g) Because said conditions do not contain any clause of re-entry or forfeiture for a violation thereof.

100.—The Court erred in not holding that the complainant by its conduct in relation to the lands granted by said acts of Congress has waived, and is estopped from claiming, a forfeiture thereof.

101.—The Court erred in not holding that the grantees under said acts of Congress or their successors, associates or assigns, had the right to mortgage the whole, or any part, of said land grant to obtain money wherewith to construct the said railroad and telegraph line.

102.—The Court erred in not holding that under the

terms and provisions of said act of Congress of April 10, 1869, and of May 4, 1870, the grantee or grantees mentioned in said land grants cannot and could not perform the said provisions as to the sale of the lands granted to actual settlers, and by reason thereof, performance of said provisions was excused and the said granted lands vested in said grantees absolutely and discharged of said conditions.

103.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to the sale of the lands granted by said acts to actual settlers was and is unilateral and void in that actual settlers are not bound to purchase and the grantees under said grants could not compel settlers to purchase any portion or portions thereof.

104.—The Court erred in not holding that the grantee or grantees under said land grants in any event were required to sell to actual settlers only during the construction of the said railroad.

105.—The Court erred in not holding that during the period of construction of said railroad there were no actual settlers on any portion of said land grants and for that reason a sale thereof could not be made to actual settlers in any quantity, and by reason thereof the said grantee or grantees under said land grants took the same, discharged of any provision for the sale thereof to actual settlers.

106.—The Court erred in not holding that during the construction of said railroad it was impossible for the said grantee or grantees under said land grants to sell any portion of said grants to actual settlers, and that by reason thereof such sale was excused and the title to said granted land in Oregon and the whole thereof vested in the said defendant, Oregon and California Railroad Company.

107.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, if and when operative, was directive to the Oregon and California Railroad Company to sell to actual settlers only, land in quantities not greater than one quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents (\$2.50) per acre, and did not prohibit the sale of said granted lands to persons other than actual settlers in any quantity and at any price.

108.—The Court erred in not holding that the purpose of the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said granted lands to actual settlers in quantities not exceeding one quarter section to each purchaser and at a price not exceeding two dollars and fifty cents (\$2.50) per acre, was to give to actual settlers an option to purchase lands in said grants on said terms and not intended to prohibit the said Oregon and California Railroad Company from selling the lands in said grants to others than actual settlers in any quantity and at any price.

109.—The Court erred in not holding that Congress, in passing the act of April 10, 1869, and the act of May 4, 1870, contemplated two classes of persons to whom said granted lands would be sold in aid of the construction of said railroad, namely, actual settlers in possession of some portion of said grant, and persons who are not actual settlers and who are not in possession of any portion of said grant.

110.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, are, and each of them is, in restraint of alienation and void in that:

(a) It limits the time during which the property can be held by the grantee.

(b) It provides for the alienation to a limited class of persons.

(c) It limits the amount of land which may be sold to any one person.

(d) It limits the price at which it can be sold.

111.—The Court erred in holding that the said land grants did not become operative until the Railroad Company filed its assent to the terms and conditions of Section Six of the act of July 25, 1866, as amended April 10, 1869.

112.—The Court erred in holding that issuance of patents to said lands by the land department was not

a waiver on the part of the complainant of the right to insist upon the performance by the Railroad Company of the provisions in said grants as to the sale of lands to actual settlers.

113.—The Court erred in holding that the act of Congress of April 10, 1869, was a renewal or revival of the grant under the act of Congress of July 25, 1866, or that the said act of April 10, 1869, was other than a waiver of the right of forfeiture on account of any of the conditions in said grant.

114.—The Court erred in holding that at the time of the passage of the said act of Congress of April 10, 1869, the said land grant under the act of Congress of July 25, 1866, had lapsed.

115.—The Court erred in not holding that this suit cannot be maintained as one to enforce forfeiture nor to quiet title, because—

(a) Neither the United States nor Congress has declared a forfeiture; and

(b) The fact of forfeiture has not been adjudicated by a court of law; and

(c) The defendant, Railroad Company, holds the legal title to and the possession of said granted lands.

116. The Court erred in not holding that the said defendant, Oregon and California Railroad Company, was entitled to a trial by jury of the issue as to whether or not any of the conditions of said grants, or either of

them, had been breached.

117. The Court erred in not holding that the complainant and Congress had knowledge of all the alleged breaches of the provisions in each of said land grants for the sale of the granted lands to actual settlers; and that the complainant and Congress acquiesced in said breaches, with the knowledge thereof and complainant is estopped to claim a forfeiture of said land grant, or any part thereof.

118.—The Court erred in not holding that during the year 1879, down to and including the year 1903, reports were regularly and semi-annually made of the transactions of the land department of said defendant, Oregon and California Railroad Company, to the Auditor of Railroad Accounts created by the act of Congress of June 19, 1878, showing the total cash receipts from all sales of the said granted lands to the date of said report; the average price per acre for all sales to the date of said report, and the average price per acre for all sales during the half year; the average price per acre for all purchases to the date of said report; the maximum price per acre from sales (not town lots); the minimum price per acre from sales (not town lots); the maximum price per acre asked at the time of making such report; the minimum price per acre asked at the time of making such report; and that the Auditor of Railroad Accounts, pursuant to the provisions of the said act of Congress of June 19, 1878, made like annual reports during the whole of said period to the Secretary

of the Interior, and that annually during the whole of said period the Secretary of the Interior transmitted the said reports to Congress, and that said reports showed that during the year 1879, down to and including the year 1903, the said defendant, Oregon and California Railroad Company, sold some of said granted lands at a price in excess of two dollars and fifty cents (\$2.50) per acre; also in quantities exceeding one hundred and sixty (160) acres; and that Congress and complainant, with the knowledge of the said matters and things contained in said reports, acquiesced therein and permitted the said defendant railroad company to take action accordingly and to alter its position and to continue to so administer said grant, and that complainant was, and is, therefore, estopped from claiming a breach of any of the conditions, if such there be, in said grant, or a forfeiture on account thereof, and has waived said alleged breaches and acquiesced therein.

119.—The Court erred in not holding that the complainant was estopped by the act of the Secretary of the Interior in approving, as bases of lieu land selections, deeds conveying property sold in alleged violation of the said provisions in said grants as to the sale of said granted lands to actual settlers only.

120.—The Court erred in holding that the “East Side Company,” so-called, by accepting the grant under the Act of Congress of July 25, 1866, as amended by the act of April 10, 1869, was estopped from denying the right or power of Congress to pass an Act imposing any

conditions repugnant to the original grant.

121.—The Court erred in not holding that the Act of Congress of July 25, 1866, granting the lands therein described to aid in the construction of a railroad and telegraph line, without any direction as to the manner of sale or disposition thereof, to aid in the construction, said railroad company had the right to sell or mortgage the whole of said granted lands for such purpose.

122.—The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to the decree rendered herein.

123.—The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered herein.

124.—The Court erred in not holding that the evidence in the above entitled cause was wholly insufficient to sustain and support the decree rendered in said cause, in that there is no evidence in the record showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of said granted lands to actual settlers only, in quantities not exceeding one hundred and sixty (160) acres to one purchaser and at a price not exceeding two dollars and fifty cents (\$2.50) per acre.

125.—The Court erred in not holding that the evidence in said cause was insufficient to support the de-

cree rendered herein or any decree in favor of complainant in that there is no evidence in this cause showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of the said granted lands to actual settlers.

126.—The Court erred in not holding that the evidence in this cause was wholly insufficient to sustain the decree rendered herein or any decree in favor of complainant, in that there was no evidence on which to base a decree of forfeiture of the lands described in the bill of complaint herein, for any alleged breach of any condition in either of said acts of Congress.

127.—The Court erred in rendering the judgment and decree herein against the said defendant, Oregon and California Railroad Company, forfeiting the lands and estates in lands described in the said decree, or any of said lands, in that there is no evidence whatever in the record in this cause showing that the said defendant violated or breached any condition in either of the said acts of Congress of July 25, 1866, June 25, 1868, or April 10, 1869, or May 4, 1870.

128.—The Court erred in holding that the patents issued in respect to the said land grants, or either of them, or any part thereof, were not conclusive against complainant as to any breach of assumed condition subsequent, or any forfeiture resulting therefrom, or from any cause whatever.

129.—The Court erred in holding that the title to so much of either of said grants as had been patented was not concluded against complainant herein by the acts of Congress of March 3, 1891, and March 2, 1896.

130.—The Court erred in holding that the title to so much of either of said grants as had been patented prior to October, 1902, was not concluded against complainant herein and that the alleged cause of action had not been barred, and the title to such patented lands made absolute.

131.—The Court erred in holding that the grant of lands under the act of July 25, 1866, had lapsed at the time of the passage of the act of Congress of April 10, 1869; and at the same time holding that the proviso in said act of April 10, 1869, for the sale of said granted lands to actual settlers, is a condition subsequent, and in not holding in such behalf that a condition subsequent must attach to a title or grant previously existing, or to a title or grant created at the same time the condition subsequent is imposed.

132.—The Court erred in not holding that a condition subsequent which may defeat a grant, if breached, must be imposed in the same act creating the grant, or if imposed in a subsequent act, then the act creating the grant must reserve the right to impose or annex such condition.

133.—The Court erred in not holding that the act of Congress of April 10, 1869, was not a new grant or a

revival of the old grant, but a waiver of a right to forfeiture of the grant already made under the act of July 25, 1866.

134.—The Court erred in not holding, assuming the said “actual settler clause” in each of said acts of Congress to be a condition subsequent, and certain, and definite, so as to be enforceable that it was repugnant to the grant and is void.

135.—The Court erred in not holding that if actual settlers did not apply to purchase the granted land and if they were not sold by or before the time following completion and acceptance of the road, then, and thereafter the said “actual settler” clause in each of said acts became inoperative and whether the words of the “actual settler” clause created a covenant or condition, the railroad company took an estate in the unsold lands absolute and unconditional.

136.—The Court erred in not holding that it is the duty of the land department of the United States to administer the land laws thereof and to determine in the first instance who are “actual settlers;” and that the proviso in the act of April 10, 1869, and the provisions in the act of May 4, 1870, in that regard, are and each of them is void, and that it was beyond the power of Congress to impose upon the railroad company a function belonging exclusively to the land department of the United States.

137.—The Court erred in not holding that the said provisions in the act of April 10, 1869, and the provisions in the act of May 4, 1870, as to the sale of such lands to actual settlers are and each of them is void, and that no method or procedure is provided in either of said acts whereby it can be determined who are actual settlers within the meaning of either of said provisions; and the question as to who are actual settlers upon such granted lands is a question committed by the laws of the United States to the land department thereof.

WHEREFORE, this defendant, individually and as trustee, prays that the said decree herein—except so much thereof as—(1) dismisses the cross-complainants of the defendants' cross-complainants and the complainants in intervention of the interveners-defendants, and (2) adjudges that the complaints' prayer for an accounting be denied, and, (3) excepts from the operation of the decree, all right of way and station grounds, as established and in actual use at the date of said decree in the operation of the railroad of the defendant Oregon and California Railroad Company, and, (4) provides that the said decree shall not apply to reservations or exceptions, in contracts or deeds of conveyance, executed by or on behalf of the defendant Oregon and California Railroad Company in the sale of any lands granted by the aforesaid act of July 25, 1866, as amended, or by said act of May 4, 1870, of right of way for the main track of the railroad of said defendant Oregon and California Railroad Company, as actually constructed, es-

tablished, and in operation at the date of said decree, be reversed, and that this Court enter a decree in accordance with the prayer of the answer and amendments thereto of this defendant, and the defendants, Oregon and California Railroad Company and Southern Pacific Company, and Stephen T. Gage, individually and as trustee, filed herein, and adjudging that the bill of complaint herein be dismissed, and for such other relief to this defendant, individually and as trustee, said Oregon and California Railroad Company, said Southern Pacific Company and said Stephen T. Gage, individually and as trustee, as may be proper.

MILLER, KING, LANE and TRAFFORD,
DOLPH, MALLORY, SIMON & GEARIN.

JOHN C. SPOONER,

JOHN M. GEARIN,

of Counsel.

Solicitors and Attorneys for said defendant,
Union Trust Company of New York, individually and as trustee.

Service of the foregoing Assignment of Errors is admitted this 29th day of August, 1913.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prah, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAbey, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschild, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. WRIGHT,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

men-
cing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &
BURKHEIMER,

Successors to

SHEPARD & FLETT;
JOHN E. BURKHEIMER,
CHARLES E. SHEPARD,
C. I. LEAVENGOOD,
JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervenor Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thomson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, Chester H. Thomson, Chas. B. Winchester, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

State of Oregon,)
County of Multnomah.) ss.

Due and legal service of the within Asst. of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of August 1913 by receiving a true copy thereof, duly certified to as such.

JAS. C. McREYNOLDS, Attorney General,
B. D. TOWNSEND, Spl. Asst. to Atty. Genl.
By GLENN E. HUSTED, Spl. Asst. to Atty. Genl.
Attorneys for Complainant.

CLARENCE L. REAMES,
United States Attorney,
By Robert R. Rankin,
Assistant United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon,
Clerk United States District Court.

And on August 29, 1913, there was duly filed in said Court Assignment of Errors of the defendant, Stephen Gage, individually and as trustee, in words and figures as follows, to-wit:

(TITLE.)

DEFENDANT STEPHEN T. GAGE'S (INDIVIDUALLY AND AS TRUSTEE) ASSIGNMENT OF ERRORS.

The defendant, Stephen T. Gage, individually and as trustee, complains of errors in the proceedings in this case, in the District Court of the United States, for the District of Oregon, in the above entitled cause, and in the decision and decree rendered, made and entered therein, and assigns the following as the errors complained of:

1.—The Court erred in overruling the demurrer of said defendant to the bill of complaint herein.

2.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the defendants, Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as trustee, to the bill of complaint herein:

As against the said defendants and each of them, the said bill of complaint is without equity and cannot be

State of Oregon,)
) ss.
County of Multnomah.)

Due and legal service of the within Asst. of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of August 1913 by receiving a true copy thereof, duly certified to as such.

JAS. C. McREYNOLDS, Attorney General,
B. D. TOWNSEND, Spl. Asst. to Atty. Genl.
By GLENN E. HUSTED, Spl. Asst. to Atty. Genl.
Attorneys for Complainant.

CLARENCE L. REAMES,
United States Attorney,
By Robert R. Rankin,
Assistant United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon,
Clerk United States District Court.

And on August 29, 1913, there was duly filed in said court Assignment of Errors of the defendant, Stephen T. Gage, individually and as trustee, in words and figures as follows, to-wit:

(TITLE.)

DEFENDANT STEPHEN T. GAGE'S (INDIVIDUALLY AND AS TRUSTEE) ASSIGNMENT OF ERRORS.

The defendant, Stephen T. Gage, individually and as trustee, complains of errors in the proceedings in this case, in the District Court of the United States, for the District of Oregon, in the above entitled cause, and in the decision and decree rendered, made and entered therein, and assigns the following as the errors complained of:

1.—The Court erred in overruling the demurrer of this defendant to the bill of complaint herein.

2.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the defendants, Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as trustee, to the bill of complaint herein:

As against the said defendants and each of them, the said bill of complaint is without equity and cannot be

maintained as to the "East Side Grant," so-called in said bill of complaint and subject thereof.

3.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them, the said bill of complaint is without equity, and cannot be maintained, as to the "West Side Grant," so-called, in said bill of complaint and subject thereof.

4.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them, the said bill of complaint is without any equity whatsoever.

5.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complaint to:

Any relief as to the "East Side Grant," so-called in said bill of complaint, and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the said "East Side Grant."

6.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "West Side Grant," so-called, in said bill of complaint and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the "West Side Grant."

7.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree declaring or adjudging forfeiture of all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

8.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree quieting the title to all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

9.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree or order requiring the defendants or any of them to surrender unto complainant possession or control of lands or estates in lands described or referred

to in paragraph 1 of subdivision First of the prayer of the said bill of complaint herein.

10.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any injunction requiring the said defendants, or any of them, to do or perform any of the acts or things set forth or mentioned in paragraph 3 of subdivision First of the prayer of the bill of complaint herein.

11.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order or decree asked for in the Second subdivision of the prayer of the bill of complaint herein.

12.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order asked for or mentioned in the Fifth subdivision of the prayer of the bill of complaint herein.

13.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief whatsoever.

14.—The Court erred in holding that the United States, complainant herein, was entitled to the relief prayed for in its complaint herein, or to any relief, and in not holding that the said complaint of said complainant should be dismissed.

15.—The Court erred in holding that the complainant had any right, title or interest in or to the lands de-

scribed in the decree herein, or any part thereof.

16.—The Court erred in holding that the complainant is the owner in fee simple, or in the possession of said lands, or any part thereof, or entitled to the possession of the same, or any part thereof.

17.—The Court erred in holding that the defendant, the Oregon and California Railroad Company, was not the owner in fee simple and in the possession, and entitled to the possession of said lands, and the whole thereof.

18.—The Court erred in holding that the allegations in said bill of complaint were sustained by the evidence, and in not holding that said bill should be dismissed.

19.—The Court erred in holding that the lands or any thereof, described in the decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any thereof, to the complainant.

20.—The Court erred in holding that the lands and estates in lands in the said decree described, either in whole or in part have become or now are forfeited to, or that the title to the same or any part thereof, has reverted to and now is revested in the United States of America, or that the same or any part thereof now are the absolute property of the United States of America, or are free from any or all claim or claims of right, title or interest or lien in, to, or upon the same or any part

thereof by or in favor of this defendant, individually or as trustee, or the defendant Oregon and California Railroad Company, or the defendant Southern Pacific Company, or the defendant Union Trust Company, individually or as trustee, or any party or parties claiming under them, or either or any of them.

21.—The Court erred in holding that the title of complainant to the said lands, or any thereof, should be quieted.

22.—The Court erred in holding that the title of the United States of America to all or any of said lands or estates in lands be or is by said decree quieted or confirmed, or be or is so quieted or confirmed, particularly as to any or all claim or claims of right, title, interest or lien in, to, or upon the same or any part thereof, by or in favor of this defendant, individually or as trustee, or the said Oregon and California Railroad Company, or the said Southern Pacific Company, or the said Union Trust Company, individually or as trustee, or each or every party or parties claiming under them, or either or any of them.

23.—The Court erred in holding that complainant was entitled to recover its costs and disbursements herein, and that a decree should be entered to that effect.

24.—The Court erred in holding that the complainant herein was or is entitled to any injunction or restraining order in this cause.

25.—The Court erred in holding that this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or the officers or agents of them, or any or either of them, be, or that they, or any or either of them by said decree are or is forever, or at all, enjoined or restrained from claiming or asserting, or from claiming or asserting in any manner any right, title, interest or lien in, to, or upon the said lands, or estates in lands, or any part thereof, or from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein, or from negotiating, executing, or recording any document or instrument, or from doing any other act or thing which shall in any manner affect or encumber the title to said lands or estates in lands or any part thereof, or from going upon said lands, or any part thereof, or from cutting, removing or in any manner using or injuring any timber or other natural products thereof, or from committing in any manner trespass upon said lands, or any part thereof, or from using or interfering with in any manner said lands or estates in lands, or any part thereof, or the title or possession thereof, or from contracting with, inviting or inducing, or permitting, or in any manner whatsoever permitting others, or any party to do any of the things aforesaid.

26.—The Court erred in holding as to all or any lands which may hereafter revert, as in paragraph IV

of said decree set forth, to this defendant, individually or as trustee, or to said Oregon and California Railroad Company, or to said Southern Pacific Company, or to said Union Trust Company, individually or as trustee, that this defendant, or the said Oregon and California Railroad Company, or the said Union Trust Company, or any or either of them shall within sixty days, or any other period of time, from the date that any of said lands shall so revert to said defendants, or any or either of them, or at all, execute or file with the clerk of said court, or otherwise, or at all, any deed of conveyance in due or legal form, or at all, conveying or confirming unto the United States of America all or any of said lands, free from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or either or any of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed or deeds of conveyance, said decree shall operate or shall have the same force or effect as such deed or deeds of conveyance.

27.—The Court erred in holding that within sixty days or any other time, from the date of said decree, or otherwise or at all, this defendant, or said Oregon and California Railroad Company, or said Union Trust Company, or any or either of them, shall execute or deliver to the clerk of said court, or otherwise, or at all, a deed of conveyance in due or legal form, or at all, conveying and confirming unto the United States of

America all or any of said lands situated in the State of Washington, free or clear from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or any or either of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed of conveyance, said decree shall operate or shall have the same force or effect as such deed of conveyance.

28.—The Court erred in holding that the above mentioned defendant, Union Trust Company, had no lien on said lands or any part thereof, and in holding that the lien of said defendant evidenced by deed of trust of date of July 1, 1887, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

29.—The Court erred in holding that this defendant, as trustee, or the said Southern Pacific Company, had no lien on said lands or any part thereof, and in holding that the lien of this defendant, as trustee, evidenced by deed of trust of date June 2, 1881, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

30.—The Court erred in holding that said Union Trust Company of New York, as trustee for the own-

ers and holders of bonds issued under and by virtue of trust mortgage of July 1, 1887, was not entitled to the rights, or to all or any of the rights of an innocent purchaser for value.

31.—The Court erred in holding that whatever interpretation might be given to the proviso touching actual settlers of said act of April 10, 1869, or whether the same created a condition subsequent or not, said Union Trust Company of New York was not entitled to a lien upon the right of way and the whole land grant of the said act of July 25, 1866, as security for the sum of twenty million dollars, as provided in its mortgage of July 1, 1887, and in holding that said Union Trust Company was not entitled to have said lien impressed upon said right of way and said entire land grant to be satisfied first and before forfeiture or reversion to the complainant, or said United States of America, if forfeiture or reversion should be decreed.

32.—The Court erred in holding that the right to forfeiture for breach of condition subsequent is not a right that may be waived, and in holding that in this case, as to said Union Trust Company, said right, if it ever existed, was not waived by said complainant and said United States of America, and in holding that said complainant and said United States of America is not estopped to allege a breach of such condition or to pray or have forfeiture as against said defendant, said Union Trust Company of New York.

33.—The Court erred in holding that the paramount

and primary purpose of Congress touching the land grant under the act of Congress of July 25, 1866, mentioned in the bill of complaint and entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," or any amendment thereof, is expressed by the proviso as to sale to actual settlers, contained in the act of Congress of April 10, 1869, referred to in said bill, and entitled, "An act to amend an act entitled, 'an act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon.'"

34.—The Court erred in holding that the paramount and primary purpose in making the said land grant was other than to aid in the construction of a railroad, as expressed in the said act of July 25, 1866.

35.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of May 4, 1870, mentioned in the bill of complaint, and entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," was other than to aid in the construction of a railroad as expressed in said last mentioned act.

36.—The Court erred in holding that this defendant, individually or as trustee, or said Oregon and Cali-

fornia Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or any or either of them, had at any time violated any provision of said act of July 25, 1866, or of said act of April 10, 1869, or of said act of May 4, 1870, or more particularly any clause or provision either in said act of April 10, 1869, or in said act of May 4, 1870, relative to actual settlers.

37.—The Court erred in holding that in respect to the said land grants, or either of them, there had been any application thereof by the grantees of the same, or either of them, or their successors in interest, or by this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or any or either of them, other than in fulfillment of and compliance with the paramount and primary purpose of Congress in making the said land grants, or either of them.

38.—The Court erred in holding that the application of the land grant under the said act of July 25, 1866, denominated by way of distinction the East Side Grant, to the construction of the railroad contemplated therein, by way of a mortgage or deed of trust of said land grant to raise funds, or refund the same, for the construction of such railroad, was a violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

39.—The Court erred in holding that the application of the said East Side Grant to the construction of the railroad contemplated in said act of July 25, 1866, by way of a deed of trust or mortgage of said land grant to raise funds, or to refund the same, for the construction of such railroad, was in subjection and subordination to, and restricted by, the proviso in said act of April 10, 1869, relative to actual settlers.

40.—The Court erred in holding that any sale or sales of lands forming part of said East Side Grant, pursuant to the mortgage or mortgages, deed, or deeds of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness, so secured or refunded, constituted any departure from or violation of any purpose, or enactment of Congress in the premises, or were other than a fulfillment of and compliance with, the policy, intent and legislation of Congress.

41.—The Court erred in holding that the lands of said East Side Grant, or any part thereof, had been sold in breach or violation of any provision of the said act of July 25, 1866, or of said act of April 10, 1869.

42.—The Court erred in holding that the grantee of said East Side Grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company,

individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same, or any part thereof, in breach of any act of Congress or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress in the premises.

43.—The Court erred in holding that the application of the land grant under the said act of May 4, 1870, denominated by way of distinction, the West Side Grant, to the construction of the railroad therein contemplated, by way of a mortgage or deed of trust of said grant to raise funds, or to refund the same, for the construction of such railroad was in breach of any provision of said last mentioned act, or in violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

44.—The Court erred in holding that the application of the said West Side Grant to the construction of the railroad contemplated in said act of May 4, 1870, by way of a mortgage or deed of trust of said grant to raise funds, or refund the same, for the construction of such railroad, was in subjection and subordination to and restricted by anything in said last mentioned act as to actual settlers.

45.—The Court erred in holding that any sale or sales of lands forming part of said West Side Grant,

under any mortgage or deed of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with the policy, intent and legislation of Congress.

46.—The Court erred in holding that the lands of said West Side Grant, or any part thereof, had been sold in breach of any provision of the said act of May 4, 1870.

47.—The Court erred in holding that the grantee of said West Side Grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same or any part thereof, in breach of said act of May 4, 1870, or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress, in the premises.

48.—The Court erred in not holding that the proviso in the Act of Congress of April 10, 1869, to-wit, "That the lands granted by the act aforesaid shall be

sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and for a price not exceeding two dollars and fifty (\$2.50) cents per acre," is void for uncertainty.

49.—The Court erred in not holding that the said proviso is a purely directive, regulative covenant.

50.—The Court erred in not holding that the said proviso is unenforceable by the United States, because its interest is purely nominal.

51.—The Court erred in not holding that the said granted lands, East Side and West Side, both or either, are timbered in character and were and are not capable of actual settlement.

52.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been done away with by the act of Congress of June 25, 1868, mentioned in the bill of complaint and entitled, "An act to amend an act, entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon.' "

53.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been waived by said act of June 25, 1868.

54.—The Court erred in holding that said provision as to the filing of assent had not been repealed by said

act of June 25, 1868.

55.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868.

56.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the designation of the Oregon Central (East Side) Railroad Company, by the legislature of Oregon, on October 20, 1868.

57.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the construction work, previous thereto, of the Oregon Central (East Side) Railroad Company, and with the subsequent designation of said last named company by the legislature of Oregon, on October 20, 1868.

58.—The Court erred in holding that said provision as to the filing of assent attached itself to any right, title or interest of the grantee of said East Side grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or any or either of them, by or through any estoppel, consent, legislative obligation, covenant, condition or otherwise because of the action of said East Side Com-

pany in filing written assent on June 30, 1869, or at any other time, or in taking any step or steps to bring the attention of Congress to the matter of such assent, or to procure any action by Congress in that behalf, if any such step or steps were taken, or in applying to Congress, if such application there was, for leave to file such assent, or otherwise, or at all.

59.—The Court erred in holding that said provision as to the filing of assent, in respect to said East Side Grant, was a condition, either precedent or subsequent.

60.—The Court erred in holding that the proviso in respect to settlers in said act of April 10, 1869, was a question in the case requiring judicial determination.

61.—The Court erred in holding that any imposition by Congress under said proviso of any qualification, restriction, limitation, or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity.

62.—The Court erred in holding that any imposition by Congress under said proviso, of any qualification, restriction, limitation or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity, regard being had to the rights of the California and Oregon Railroad Company, a California corporation, under said act of July 25, 1866, and to the vested interests, accruing under said act to said last named corporation in virtue of its acceptance of said act, and its conduct, construc-

tion and expenditures thereunder and pursuant thereto.

63.—The Court erred in not holding that the act of Congress of July 25, 1866, pleaded in the bill of complaint in this cause, was and is a single grant, of the lands described therein, to the California and Oregon Railroad Company organized under the laws of California and to such company organized under the laws of Oregon as the legislature of the latter state should thereafter designate, for the purpose of aiding the said companies in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon.

64.—The Court erred in not holding that the said grant under said act of Congress was entire and not severable, and upon the filing of assent to said act in the Department of the Interior by either of said companies within one year after the passage thereof and the completion of the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, the said act became operative and vested in the company complying therewith an interest in the entire grant.

65.—The Court erred in not holding that the California and Oregon Railroad Company filed its assent to said Act in the Department of the Interior within one year after the passage thereof and completed the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, and that

thereupon said act became operative and vested in said California and Oregon Railroad Company an interest in the entire grant.

66.—The Court erred in not holding that when the California and Oregon Railroad Company filed its assent to said Act of Congress of July 25, 1866, in the Department of the Interior within one year, and completed the first section of twenty miles of said railroad and telegraph line, within two years after the passage of the said act, Congress was without lawful authority to annex a new condition, by amendment or otherwise, to the land-grant.

67.—The Court erred in not holding that had the legislature of Oregon failed to designate a company to construct said railroad and telegraph line in Oregon, the California and Oregon Railroad Company, upon compliance with the provisions of said act of July 25, 1866, had the right and it was authorized by said act to construct the entire railroad and telegraph line from the Central Pacific in California to Portland in Oregon and thereby earn, and become entitled to, the entire land grant under said act.

68.—The Court erred in not holding that the said act of Congress of July 25, 1866, authorized the California and Oregon Railroad Company to construct any part or all of the said railroad and telegraph line provided the legislature of Oregon failed to designate a company as provided by said act, or such company failed

to file its assent to said act.

69.—The Court erred in not holding that the said act of Congress of July 25, 1866, was, as to said California and Oregon Railroad Company, a grant in presenti, of the odd-sections of lands within the limits therein specified, along the line of said railroad from Central Pacific Railroad in California to Portland in Oregon.

70.—The Court erred in not holding that at the time of the passage of the act of Congress of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had fully complied with all of the terms of said act of July 25, 1866, as amended by the act of June 25, 1868, which were required to be performed up to the time of the passage of said act of April 10, 1869.

71.—The Court erred in not holding that prior to the passage of said act of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had acquired a vested interest in the whole of the lands granted by said act of July 25, 1866, and the said act of April 10, 1869, annexing a condition to the entire grant was void.

72.—The Court erred in not holding that the said grant under the said act of Congress of July 25, 1866, being single and entire and said act of April 10, 1869, being void as to the California and Oregon Railroad Company, as to the whole of said grant, it is void as to the portion of said grant situated in the State of

Oregon.

73.—The Court erred in not holding that the said act of Congress of April 10, 1869, was void in that it requires that the interest acquired by the California and Oregon Railroad Company in the lands granted by said act of July 25, 1866, shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and at a price not exceeding two dollars and fifty cents (\$2.50) per acre, as a condition of an extension of time to the company designated by the legislature of Oregon, to file its assent to said act of July 25, 1866.

74.—The Court erred in not holding that the said act of Congress of July 25, 1866, did not require that both of the companies mentioned therein should file assent to said act or construct said railroad and telegraph line, but said act was satisfied and became operative if either of the said companies filed its assent in the Department of the Interior within one year, after the passage of said act, and completed construction of its said railroad and telegraph line within the time provided in said act and the act of June 25, 1868, amendatory thereof.

75.—The Court erred in not holding that after performance by the said California and Oregon Railroad Company, of all conditions imposed by the act of July 25, 1866, and the same as amended by the act of June 25, 1868, required to be performed prior to April 10,

1869, it acquired and possessed a vested right in the whole of said land grant and Congress was thereby deprived of the power and was without authority to "add to, alter, amend or repeal" the said act of July 25, 1866, in any way that would tend to embarrass, delay or defeat the construction of either or any portion of said railroad and telegraph line, or in any way that would tend to interfere with any vested rights in said grant.

76.—The Court erred in holding that the said proviso in respect to settlers in said act of April 10, 1869, was a condition precedent.

77. The Court erred in holding that the said proviso in said act of April 10, 1869, was a condition subsequent.

78.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of said proviso.

79. The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition precedent.

80.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition subsequent.

81.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Con-

gress to a breach, should such there be, of any provision in said act of May 4, 1870, touching sales to actual settlers.

82.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect either to said East Side Grant, or to said West Side Grant, or any part thereof.

83.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect to either of said grants, in any re-entry for breach of condition, or legislative equivalent thereof, or in any legislative declaration of forfeiture.

84.—The Court erred in holding that there was jurisdiction in the Court on the equity side of the cause or subject matter of this suit, and in not dismissing the bill of complaint.

85.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture of said East Side Grant for the breach of an assumed condition subsequent, if such breach there was, in said proviso of said act of April 10, 1869.

86.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

87.—The Court erred in holding that the complain-

ant was entitled to a decree quieting its title to either of said grants against this defendant, individually or as trustee, said Oregon and California Railroad Company, said Southern Pacific Company and said Union Trust Company, individually or as trustee, or any or either of them, or any party to the cause.

88.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company, or its grantees, if such there were, did not have the legal title to such grants.

89.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the complainant was in possession of said grants, or either of them, or any part thereof; and in holding that the Oregon and California Railroad Company, or its grantees, if such there were, did not have the possession of the same.

90.—The court erred in holding, as foundation for a suit by complainant to quiet its title to the said grants, or either of them, or any part thereof, that the same had not been reduced to possession and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

91.—The Court erred in holding that at the time of the filing of the bill of complaint herein and ever

since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company, or its grantees, if such there were, did not have possession of said grants, or either of them.

92.—The Court erred in not holding that at the time of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company had legal title and the possession of all the lands of which forfeiture is sought by said bill of complaint against this defendant, individually and as trustee, and said Oregon and California Railroad, and said Southern Pacific Company, and against said Union Trust Company, individually and as trustee.

93.—The Court erred in holding that the said proviso of said act of April 10, 1869, or any provision of said act of May 4, 1870, touching actual settlers in anywise or at all affected the title to the lands or any part thereof, either of said East Side or of said West Side Grant.

94.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

95.—The Court erred in holding, on the assumption

of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

96.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture, had not been acquiesced in by Congress and complainant.

97.—The Court erred in holding, on the assumption of a condition subsequent in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been acquiesced in by Congress and complainant.

98.—The Court erred in holding on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to the said East Side Grant, that as to any breach of such assumed condition subsequent, or assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

99.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that as to any breach of such assumed subsequent, or any assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

100.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acquiescence in the many deeds of conveyance made by the defendant, Oregon and California Railroad Company, with the knowledge of Congress and complainant.

101.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acceptance and use of the said railroad.

102.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by annual issuance of patents to said lands from 1871 down to 1906.

103.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by the passage by Congress of the Forfeiture Acts of January 31, 1885 and September 29, 1890.

104.—The Court erred in not holding that this suit as to all lands patented prior to October 1902, was and is barred by the Acts of Congress of March 3, 1891 and March 2, 1896.

105.—The Court erred in not holding that all causes of action presented by the bill of complaint herein are barred by laches and the statute of limitations.

106.—The Court erred in holding that the primary and controlling purpose of Congress in the Act of July 25, 1866 and acts amendatory thereof, was to provide for the sale of the granted land to actual settlers, or in that behalf, that said lands were capable of actual settlement.

107.—The Court erred in not holding that the primary object of the act of April 10, 1869, was to extend the time for the construction of the said railroad and not to impose a condition or trust upon the grant already made.

108.—The Court erred in not holding that the proviso for the sale of the lands granted to actual settlers,

contained in the act of April 10, 1869, and the provision as to settlers in the act of May 4, 1870, are, and each of them is, void because the same is repugnant to the grant and tends to defeat and destroy the primary purpose and intent of Congress in making the said grants in aid of the construction of the said railroads and telegraph lines.

109.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said lands to actual settlers, was intended only to apply to such actual settlers as were, at the dates of the acts of July 25, 1866 and May 4, 1870, in actual possession of said portions of said granted lands or who might become actual settlers before the filing of the map of survey.

110.—The Court erred in not holding, on the assumption that the said provision in the said acts of April 10, 1869, and May 4, 1870, for the sale of said granted lands to actual settlers, were conditions subsequent, that Congress and complainant waived any breach of said provisions or right to forfeiture by:

(a) Permitting the said grants to be administered by the grantees and their successors for a period of over thirty-eight years prior to the passage of the joint resolution of April 3, 1908, and prior to the commencement of this suit on the 4th day of September, 1908, with the knowledge of Congress and complainant; and

(b) The passage of the act of June 25, 1868; and

(c) The passage of the forfeiture act of January 31, 1885; and

(d) The repeated refusal of Congress to pass any other forfeiture act than the general statute on that subject; and the forfeiture act of September 29, 1890; and

(e) The continuous and regular issuance by complainant of patents to said granted lands.

111. The Court erred in not holding, on the assumption that the act of July 25, 1866, constituted and was a single grant, and so as to the West Side Grant, both or either, that a waiver on the part of Congress and the complainant of any breach of the proviso or clause as to sales to settlers in said grants, or either of them, and of forfeiture on account thereof, as to a portion of the same, with knowledge on the part of Congress and the complainant, was a waiver as to the entire grants, both or either.

112.—The Court erred in not holding, on the assumption that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to sales of said granted lands to actual settlers, are conditions subsequent, that each of said conditions subsequent is void for the following reasons:

(a) It is retroactive and its effect would be to divest the title of defendant, Oregon and California Railroad Company; and

(b) It is in restraint of and prohibits alienation except as to a particular class of persons; and

(c) The restraint on alienation is inconsistent with the purpose of the grant and the estate granted; and

(d) The said condition does not fix a definite time within which any of the lands shall be sold to actual settlers; and

(e) The said condition does not define who is an actual settlers; and

(f) The sale of said lands is wholly dependent upon there being actual settlers thereon, an uncertain event, and the restraint contained in said provision amounts to a perpetuity; and

(g) Because said conditions do not contain any clause of re-entry or forfeiture for a violation thereof.

113.—The Court erred in not holding that the complainant by its conduct in relation to the lands granted by said acts of Congress has waived, and is estopped from claiming, a forfeiture thereof.

114.—The Court erred in not holding that the grantees under said acts of Congress or their successors, associates or assigns, had the right to mortgage the whole or any part of said land grant to obtain money wherewith to construct the said railroad and telegraph line.

115.—The Court erred in not holding that under the terms and provision of the said act of Congress of

April 10, 1869, and of May 4, 1870, the grantee or grantees mentioned in said land grants cannot and could not perform the said provisions as to the sale of the lands to actual settlers, and by reason thereof, performance of said provisions was excused and the said granted lands vested in said grantees absolutely and discharged of said conditions.

116.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to the sale of the lands granted by said acts to actual settlers was and is unilateral and void in that actual settlers are not bound to purchase and the grantees under said grants could not compel settlers to purchase any portion or portions thereof.

117.—The Court erred in not holding that the grantee or grantees under said land grants in any event were required to sell to actual settlers only during the construction of the said railroad.

118.—The Court erred in not holding that during the period of construction of said railroad there were no actual settlers on any portion of said land grants and for that reason a sale thereof could not be made to actual settlers in any quantity, and by reason thereof the said grantee or grantees under said land grants took the same, discharged of any provision for the sale thereof to actual settlers.

119.—The Court erred in not holding that during

the construction of said railroad it was impossible for the grantee or grantees under said land grants to sell any portion of said grants to actual settlers, and that by reason thereof such sale was excused and the title to said granted land in Oregon and the whole thereof vested in the said defendant, Oregon and California Railroad Company.

120.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, if and when operative, was directive to the Oregon and California Railroad Company to sell to actual settlers only, land in quantities not greater than one quarter section to one purchaser, and for a price not exceeding Two Dollars and fifty cents (\$2.50) per acre, and did not prohibit the sale of said granted lands to persons other than actual settlers in any quantity and at any price.

121.—The Court erred in not holding that the purpose of the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said granted lands to actual settlers in quantities not exceeding one quarter section to each purchaser and at a price not exceeding Two Dollars and fifty cents (\$2.50) per acre, was to give to actual settlers an option to purchase lands in said grants on said terms and not intended to prohibit the said Oregon and California Railroad Company from selling the lands in said grants to others than actual settlers in any quantity and at any price.

122.—The Court erred in not holding that Congress, in passing the act of April 10, 1869 and the act of May 4, 1870, contemplated two classes of persons to whom said granted lands would be sold in aid of the construction of said railroad, namely, actual settlers in possession of some portion of said grant, and persons who are not actual settlers and who are not in possession of any portion of said grant.

123.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, are, and each of them is, in restraint of alienation and void in that:

(a) It limits the time during which the property can be held by the grantee.

(b) It provides for the alienation to a limited class of persons.

(c) It limits the amount of land which may be sold to any one person.

(d) It limits the price at which it can be sold.

124.—The Court erred in holding that the said land grants did not become operative until the Railroad Company filed its assent to the terms and conditions of Section Six of the act of July 25, 1866, as amended April 10, 1869.

125.—The Court erred in holding that issuance of patents to said lands by the land department was not

a waiver on the part of the complainant of the right to insist upon the performance by the Railroad Company of the provisions in said grants as to the sale of lands to actual settlers.

126.—The Court erred in holding that the act of Congress of April 10, 1869, was a renewal or revival of the grant under the act of Congress of July 25, 1866, or that the said act of April 10, 1869 was other than a waiver of the right of forfeiture on account of any of the conditions in said grant.

127.—The Court erred in holding that at the time of the passage of the said act of Congress of April 10, 1869, the said land grant under the act of Congress of July 25, 1866, had lapsed.

128.—The Court erred in not holding that this suit cannot be maintained as one to enforce forfeiture nor to quiet title, because—

(a) Neither the United States nor Congress has declared a forfeiture; and

(b) The fact of forfeiture has not been adjudicated by a court of law; and

(c) The defendant, Railroad Company, holds the legal title to and the possession of said granted lands.

129.—The Court erred in not holding that the said defendant, Oregon and California Railroad Company, was entitled to a trial by jury of the issue as to whether

or not any of the conditions of said grants, or either of them, had been breached.

130.—The Court erred in not holding that the complainant and Congress had knowledge of all the alleged breaches of the provisions in each of said land grants for the sale of the granted lands to actual settlers; and that the complainant and Congress acquiesced in said breaches, with the knowledge thereof, and complainant is estopped to claim a forfeiture of said land grant or any part thereof.

131.—The Court erred in not holding that during the year 1879, down to and including the year 1903, reports were regularly and semi-annually made of the transactions of the land department of said defendant Oregon and California Railroad Company to the Auditor of Railroad Accounts created by the Act of Congress of June 19, 1878, showing the total cash receipts from all sales of the said granted lands to the date of said report; the average price per acre for all sales to the date of said report, and the average price per acre for all sales during the half year; the average price per acre for all purchases to the date of said report; the maximum price per acre from sales (not town lots); the minimum price per acre from sales (not town lots); the maximum price per acre asked at the time of making such report; the minimum price per acre asked at the time of making such report; and that the Auditor of Railroad Accounts, pursuant to the provisions of the said Act of Congress of June 19, 1878, made like an-

nual reports during the whole of said period to the Secretary of the Interior, and that annually during the whole of said period the Secretary of the Interior transmitted the said reports to Congress, and that said reports showed that during the year 1879, down to and including the year 1903, the said defendant, Oregon and California Railroad Company sold some of said granted lands at a price in excess of Two Dollars and fifty cents (\$2.50) per acre; also in quantities exceeding one hundred and sixty (160) acres; and that Congress and complainant, with the knowledge of the said matters and things contained in said reports, acquiesced therein and permitted the said defendant railroad company to take action accordingly and to alter its position and to continue to so administer said grant, and that complainant was, and is, therefore, estopped from claiming a breach of any of the conditions, if such there be, in said grant, or a forfeiture on account thereof, and has waived said alleged breaches and acquiesced therein.

132.—The Court erred in not holding that the complainant was estopped by the acts of the Secretary of the Interior in approving, as bases of lieu land selections, deeds conveying property sold in alleged violation of the said provisions in said grants as to the sale of said granted lands to actual settlers only.

133.—The Court erred in holding that the "East Side Company," so-called, by accepting the grant under the Act of Congress of July 25, 1866, as amended by

the Act of April 10, 1869, was estopped from denying the right or power of Congress to pass an Act imposing any conditions repugnant to the original grant.

134.—The Court erred in not holding that the Act of Congress of July 25, 1866, granting the lands therein described to aid in the construction of a railroad and telegraph line, without any direction as to the manner of sale or disposition thereof, to aid in the construction, said railroad company had the right to sell or mortgage the whole of said granted lands for such purpose.

135.—The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to the decree rendered herein.

136.—The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered herein.

137.—The Court erred in not holding that the evidence in the above-entitled cause was wholly insufficient to sustain and support the decree rendered in said cause, in that there is no evidence in the record showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of said granted lands to actual settlers, only, in quantities not exceeding one hundred and sixty acres to one purchaser and at a price not exceeding Two Dollars and Fifty cents (\$2.50) per acre.

138.—The Court erred in not holding that the evidence in said cause was insufficient to support the decree rendered herein or any decree in favor of complainant in that there is no evidence in this cause showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of the said granted lands to actual settlers.

139.—The Court erred in not holding that the evidence in this cause was wholly insufficient to sustain the decree rendered herein or any decree in favor of complainant, in that there was no evidence on which to base a decree of forfeiture of the lands described in the bill of complaint herein, for any alleged breach of any condition in either of said acts of Congress.

140.—The Court erred in rendering the judgment and decree herein against the said defendant, Oregon and California Railroad Company, forfeiting the lands and estates in lands described in the said decree, or any of said lands, in that there is no evidence whatever in the record in this cause showing that the said defendant violated or breached any condition in either of the said acts of Congress of July 25, 1866, June 25, 1868 or April 10, 1869, or May 4, 1870.

141.—The Court erred in holding that the patents issued in respect to the said land grants, or either of them, or any part thereof, were not conclusive against complainant as to any breach of assumed condition sub-

sequent, or any forfeiture resulting therefrom, or from any cause whatever.

142.—The Court erred in holding that the title to so much of either of said grants as had been patented was not concluded against complainant herein by the acts of Congress of March 3, 1891 and March 2, 1896.

143.—The Court erred in holding that the title to so much of either of said grants as had been patented prior to October 1902, was not concluded against complainant herein and that the alleged cause of action had not been barred, and that the title to such patented lands made absolute.

144.—The Court erred in holding that the grant of lands under the act of July 25, 1866, had lapsed at the time of the passage of the act of Congress of April 10, 1869; and at the same time holding that the proviso in said act of April 10, 1869 for the sale of said granted lands to actual settlers, is a condition subsequent, and in not holding in such behalf that a condition subsequent must attach to a title or grant previously existing, or to a title or grant created at the same time the condition subsequent is imposed.

145.—The Court erred in not holding that a condition subsequent which may defeat a grant, if breached, must be imposed in the same act creating the grant, or if imposed in a subsequent act, then the act creating the grant must reserve the right to impose or annex such condition.

146.—The Court erred in not holding that the act of Congress of April 10, 1869, was not a new grant or revival of the old grant, but a waiver of a right to forfeiture of the grant already made under the act of July 25, 1866.

147.—The Court erred in not holding, assuming the said “actual settler clause” in each of said acts of Congress to be a condition subsequent, and certain, and definite, so as to be enforceable that it was repugnant to the grant and is void.

148.—The Court erred in not holding that if actual settlers did not apply to purchase the granted land and if they were not sold by or before the time following completion and acceptance of the road, then, and thereafter the said “actual settler” clause in each of said acts became inoperative and whether the words of the “actual settler” clause created a covenant or condition, the railroad company took an estate in the unsold lands absolute and unconditional.

149.—The Court erred in not holding that it is the duty of the land department of the United States to administer the land laws thereof and to determine in the first instance who are “actual settlers”; and that the proviso in the act of April 10, 1869, and the provisions in the act of May 4, 1870, in that regard, are and each of them is void, and that it was beyond the power of Congress to impose upon the Railroad Company a function belonging exclusively to the land de-

partment of the United States.

150.—The Court erred in not holding that the said provisions in the act of April 10, 1869, and the provisions in the act of May 4, 1870, as to the sale of such lands to actual settlers are and each of them is void, in that no method or procedure is provided in either of said acts whereby it can be determined who are actual settlers within the meaning of either of said provisions; and the question as to who are actual settlers upon such granted lands is a question committed by the laws of the United States to the land department thereof.

WHEREFORE, this defendant, individually and as trustee, prays that the said decree herein—except so much thereof as—(1) dismisses the cross-complaints of the defendants-cross-complainants and the complaints in intervention of the interveners-defendants, and, (2) adjudges that the complainant's prayer for an accounting be denied, and, (3) excepts from the operation of the decree, all right of way and station grounds, as established and in actual use at the date of said decree in the operation of the railroad of the defendant Oregon and California Railroad Company, and, (4) provides that the said decree shall not apply to reservations or exceptions, in contracts or deeds of conveyance, executed by or on behalf of the defendant Oregon and California Railroad Company in the sale of any lands granted by the aforesaid act of July 25, 1866, as amended, or by said act of May 4, 1870, of right of way for the main track of the railroad of said defendant Oregon and California Railroad Company, as actually con-

structed, established, and in operation at the date of said decree—be reversed, and that this Court enter a decree in accordance with the prayer of the answer and amendments thereto of this defendant, and the defendants, Oregon and California Railroad Company and Southern Pacific Company, filed herein, and adjudging that the bill of complaint herein be dismissed, and for such other relief to this defendant, individually and as trustee, said Oregon and California Railroad Company, said Southern Pacific Company and said Union Trust Company, individually and as trustee, as may be proper.

PETER F. DUNNE,

WM. D. FENTON,

and JAMES E. FENTON,

Solicitors and Attorneys for said defendant,
Stephen T. Gage, individually and as
trustee.

WM. F. HERRIN, of Counsel.

Service of the foregoing assignment of errors admitted this 29th day of August, 1913.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

**SHEPARD &
BURKHEIMER,**

Successors to

**SHEPARD & FLETT;
JOHN E. BURKHEIMER,
CHARLES E. SHEPARD,
C. I. LEAVENGOOD,
JNO. MILLS DAY,**

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,
LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervenor Luther E. Trowbridge.

A. C. WOODCOCK,
GEO. W. WRIGHT,

Solicitors and Attorneys for the said intervenors George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said intervenors Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,
LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,
GRIDLEY, CULVER
& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,
JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,
CLAUDE STRAHAN,
LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and
H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thomson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, Chester H. Thomson, Chas. B. Winchester, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

District of Oregon)
) ss.
County of Multnomah)

Due service of the within Asst. of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of August, 1913, by receiving a copy thereof, duly certified to.

JAS. C. McREYNOLDS, Attorney General,
B. D. TOWNSEND, Spcl. Asst. to Atty. Genl.
By GLENN E. HUSTED, Spl. Asst. to Atty. Genl.
Attorneys for Complainant.

CLARENCE L. REAMES,
United States Attorney,
By Robert R. Rankin,
Assistant United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon,
Clerk United States District Court.

And on August 29, 1913, there was duly filed in said Court the Assignment of Errors of defendant Southern Pacific Company, in words and figures as follows, to-wit:

(TITLE)

DEFENDANT SOUTHERN PACIFIC COMPANY'S ASSIGNMENT OF ERRORS.

The defendant, Southern Pacific Company, complains of errors in the proceedings in this case, in the District Court of the United States, for the District of Oregon, in the above entitled cause, and in the decision and decree rendered, made and entered therein, and assigns the following as the errors complained of:

1.—The Court erred in overruling the demurrer of this defendant to the bill of complaint herein.

2.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the defendants, Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as trustee, to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without equity and cannot be maintained as to the "East Side Grant," so-called in said bill of complaint and subject thereof.

3.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without equity, and cannot be maintained as to the “West Side Grant”, so-called in said bill of complaint and subject thereof.

4.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without any equity whatsoever.

5.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the “East Side Grant”, so-called in said bill of complaint, and subject thereof, or because of or arising out of any facts, particulars, trans-

actions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the said "East Side Grant."

6.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "West Side Grant," so-called in said bill of complaint and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the "West Side Grant."

7.—The Court erred in overuling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree declaring or adjudging forfeiture of all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

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8.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, said bill of complaint does not set forth or show matter, equity or cause, entitling complainant to:

A decree quieting the title to all or any of the lands states in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

9.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, said bill of complaint does not set forth or show matter, equity or cause, entitling complainant to:

A decree or order requiring the defendants or any of them to surrender unto complainant possession or control of lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the said bill of complaint herein.

10.—The Court erred in overruling and in not sus-

actions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the said "East Side Grant."

6.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "West Side Grant," so-called in said bill of complaint and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the "West Side Grant."

7.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree declaring or adjudging forfeiture of all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

8.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree quieting the title to all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

9.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree or order requiring the defendants or any of them to surrender unto complainant possession or control of lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the said bill of complaint herein.

10.—The Court erred in overruling and in not sus-

taining the following grounds of the said joint and several demurrèr of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction requiring the said defendants, or any of them, to do or perform any of the acts or things set forth or mentioned in paragraph 3 of subdivision First of the prayer of the bill of complaint herein.

11.—The Courts erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order or decree asked for in the Second subdivision of the prayer of the bill of complaint herein.

12.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order asked for or mentioned in the Fifth subdivision of the prayer of the bill of complaint herein.

13.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling the complainant to:

Any relief whatsoever.

14.—The Court erred in holding that the United States, complainant herein, was entitled to the relief prayed for in its complaint herein, or to any relief, and in not holding that the said complaint of said complainant should be dismissed.

15.—The Court erred in holding that the complainant had any right, title or interest in or to the lands described in the decree herein, or any part thereof.

16.—The Court erred in holding that the complainant is the owner in fee simple, or in the possession of

said lands, or any part thereof, or entitled to the possession of the same, or any part thereof.

17.—The Court erred in holding that the defendant, the Oregon and California Railroad Company, was not the owner in fee simple and in the possession, and entitled to the possession of said lands, and the whole thereof.

18.—The Court erred in holding that the allegations in said bill of complaint were sustained by the evidence, and in not holding that the said bill should be dismissed.

19.—The Court erred in holding that the lands, or any thereof, described in the decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any thereof, to the complainant.

20.—The Court erred in holding that the lands and estates in lands in the said decree described, either in whole or in part, have become or now are forfeited to, or that the title to the same, or any part thereof, has reverted to and now is revested in the United States of America, or that the same, or any part thereof, now are the absolute property of the United States of America, or are free from any or all claim or claims of right, title or interest or lien in, to, or upon the same or any part thereof by or in favor of this defendant, or defendant Oregon and California Railroad Company, or defendant Stephen T. Gage, individually or as trustee, or de-

fendant, Union Trust Company, individually or as trustee, or any party or parties claiming under them, or either or any of them.

21.—The Court erred in holding that the title of complainant to the said lands, or any part thereof, should be quieted.

22.—The Court erred in holding that the title of the United States of America to all or any of said lands or estates in lands be or is by said decree quieted or confirmed, or be or is so quieted, or confirmed, particularly as to any or all claim or claims of right, title, interest or lien in, to or upon the same, or any part thereof, by or in favor of this defendant, or the said Oregon and California Railroad Company, or the said Stephen T. Gage, individually or as trustee, or the said Union Trust Company, individually or as trustee, or each or every party or parties claiming under them, or either or any of them.

23.—The Court erred in holding that complainant was entitled to recover its costs and disbursements herein, and that a decree should be entered to that effect.

24.—The Court erred in holding that:

The complainant herein was or is entitled to any injunction or restraining order in this cause.

25.—The Court erred in holding that this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually, or as trustee, or

said Union Trust Company, individually or as trustee, or the officers or agents of them, or any or either of them, be, or that they, or either of them by said decree are or is forever, or at all, enjoined or restrained from claiming or asserting, or from claiming or asserting in any manner any right, title, interest or lien in, to or upon the said lands, or estates in lands, or any part thereof, or from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein, or from negotiating, executing, or recording any document or instrument, or from doing any other act or thing which shall in any manner affect or encumber the title to said lands or estates in lands or any part thereof, or from going upon said lands, or any part thereof, or from cutting, removing or in any manner using or injuring any timber or other natural products thereof, or from committing in any manner trespass upon said lands, or any part thereof, or from using or interfering with in any manner said lands or estates in lands, or any part thereof, or the title or possession thereof, or from contracting with, inviting or inducing, or permitting, or in any manner whatsoever permitting others, or any party to do any of the things aforesaid.

26.—The Court erred in holding as to all or any lands which may hereafter revert, as in paragraph IV of said decree set forth, to this defendant, or to said Oregon and California Railroad Company, or to said Stephen T. Gage, individually or as trustee, or to said

Union Trust Company, individually or as trustee, that the defendant Oregon and California Railroad Company or the said Stephen T. Gage, or the said Union Trust Company, or any or either of them, shall, within sixty days, or any other period of time, from the date that any of said lands shall so revert to said defendants, or any or either of them, or at all, execute or file with the clerk of said court, or otherwise, or at all, any deed of conveyance in due or legal form, or at all, conveying or confirming unto the United States of America all or any of said lands, free from any or all claim or claims of right, title, interest or lien in, to or upon the same, or any part thereof, in favor of said defendants, or either or any of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed or deeds of conveyance, said decree shall operate or shall have the same force or effect as such deed or deeds of conveyance.

27.—The Court erred in holding that within sixty days or any other time, from the date of said decree, or otherwise or at all, the defendant Oregon and California Railroad Company, or said Union Trust Company or said Stephen T. Gage, or any or either of them, shall execute or deliver to the clerk of said court, or otherwise, or at all, a deed of conveyance in due or legal form, or at all, conveying and confirming unto the United States of America all or any of said lands situated in the State of Washington, free or clear from any or all claim or claims of right, title, interest, or lien in, to or upon the same, or any part thereof, in

favor of said defendants, or any or either of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed of conveyance, said decree shall operate or shall have the same force or effect as such deed of conveyance.

28.—The Court erred in holding that the above mentioned defendant, Union Trust Company, had no lien on said lands or any part thereof, and in holding that the lien of said defendant, evidenced by deed of trust of date July 1, 1887, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

29.—The Court erred in holding that the above mentioned defendant, Stephen T. Gage, as trustee, or the said Southern Pacific Company had no lien on said lands, or any part thereof, and in holding that the lien of said Stephen T. Gage, as trustee, evidenced by deed of trust of date June 2, 1881, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

30.—The Court erred in holding that said Union Trust Company of New York, as trustee for the owners and holders of bonds issued under and by virtue of trust mortgage of July 1, 1887, was not entitled to the rights, or to all or any of the rights of an innocent purchaser for value.

31.—The Court erred in holding that whatever interpretation might be given to the proviso touching actual settlers of said act of April 10, 1869, or whether the same created a condition subsequent, or not, said Union Trust Company of New York was not entitled to a lien upon the right of way and the whole land grant of the said act of July 25, 1866, as security for the sum of twenty million dollars, as provided in its mortgage of July 1, 1887, and in holding that said Union Trust Company was not entitled to have said lien impressed upon said right of way and said entire land grant to be satisfied first and before forfeiture or reversion to the complainant, or said United States of America, if forfeiture or reversion should be decreed.

32.—The Court erred in holding that the right to forfeiture for breach of condition subsequent is not a right that may be waived, and in holding that in this case, as to said Union Trust Company, said right, if it ever existed, was not waived by said complainant and said United States of America, and in holding that said complainant and said United States of America is not estopped to allege a breach of such condition or to pray or have forfeiture as against said defendant, said Union Trust Company of New York.

33.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of July 25, 1866, mentioned in the bill of complaint and entitled "An Act

granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," or any amendment thereof is expressed by the proviso as to sale to actual settlers contained in the act of Congress of April 10, 1869, referred to in said bill and entitled "An Act to amend an act entitled, 'an act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon.' "

34.—The Court erred in holding that the paramount and primary purpose in making the said land grant was other than to aid in the construction of a railroad, as expressed in the said act of July 25, 1866.

35.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of May 4, 1870, mentioned in the bill of complaint, and entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," was other than to aid in the construction of a railroad, as expressed in said last mentioned act.

36.—The Court erred in holding that this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had at any time violated any

provision of said act of July 25, 1866, or of said act of April 10, 1869, or of said act of May 4, 1870, or more particularly any clause or provision either in said act of April 10, 1869, or in said act of May 4, 1870, relative to actual settlers.

37.—The Court erred in holding that in respect to the said land grants, or either of them, there had been any application thereof by the grantees of the same, or either of them, or their successors in interest, or by this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them other than in fulfillment of and compliance with the paramount and primary purpose of Congress in making the said land grants, or either of them.

38.—The Court erred in holding that the application of the land grant under the said act of July 25, 1866, denominated by way of distinction the East Side Grant, to the construction of the railroad contemplated therein, by way of a mortgage or deed of trust of said land grant to raise funds, or refund the same, for the construction of such railroad, was a violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

39.—The Court erred in holding that the application of the said East Side grant to the construction of the

railroad contemplated in said act of July 25, 1866, by way of a deed of trust or mortgage of said land grant to raise funds, or to refund the same, for the construction of such railroad, was in subjection and subordination to, and restricted by, the proviso in said act of April 10, 1869, relative to actual settlers.

40.—The Court erred in holding that any sale or sales of lands forming part of said East Side Grant, pursuant to the mortgage or mortgages, deed, or deeds of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness, so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with, the policy, intent and legislation of Congress.

41.—The Court erred in holding that the lands of said East Side grant, or any part thereof, had been sold in breach or violation of any provision of the said act of July 25, 1866, or of said act of April 10, 1869.

42.—The Court erred in holding that the grantee of Said East Side land grant, or its successors in interest, or this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any

part thereof, or sold or disposed of the same, or any part thereof, in breach of any act of Congress or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress in the premises.

43.—The Court erred in holding that the application of the land grant under the said act of May 4, 1870, denominated by way of distinction, the West Side grant, to the construction of the railroad therein contemplated, by way of a mortgage or deed of trust of said grant to raise funds, or to refund the same, for the construction of such railroad was in breach of any provision of said last mentioned act, or in violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

44.—The Court erred in holding that the application of the said West Side grant to the construction of the railroad contemplated in said act of May 4, 1870, by way of a mortgage or deed of trust of said grant to raise funds, or refund the same, for the construction of such railroad, was in subjection and subordination to and restricted by anything in said last mentioned act as to actual settlers.

45.—The Court erred in holding that any sale or sales of lands forming part of said West Side grant, under any mortgage or deed of trust of said grant for the purpose of raising such construction funds, or re-

funding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with the policy, intent and legislation of Congress.

46.—The Court erred in holding that the lands of said West Side grant, or any part thereof, had been sold in breach of any provision of the said act of May 4, 1870.

47.—The Court erred in holding that the grantee of said West Side grant, or its successors in interest, or this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same or any part thereof, in breach of said act of May 4, 1870, or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress, in the premises.

48.—The Court erred in not holding that:

The proviso in the Act of Congress of April 10, 1869, to-wit, "That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser

and for a price not exceeding two dollars and fifty cents (2.50) per acre," is void, for uncertainty.

49.—The Court erred in not holding that the said proviso is a purely directive, regulative covenant.

50.—The Court erred in not holding that the said proviso is unenforceable by the United States, because its interest is purely nominal.

51.—The Court erred in not holding that the said granted lands, East Side and West Side, both or either, are timbered in character and were not and are not capable of actual settlement.

52.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been done away with by the act of Congress of June 25, 1868, mentioned in the bill of complaint, and entitled, "An act to amend an act, entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon,' "

53.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been waived by said act of June 25, 1868.

54.—The Court erred in holding that said provision as to the filing of assent had not been repealed by said act of June 25, 1868.

55.—The Court erred in holding that said provision as to the filing of assent had not been discharged and

extinguished by said act of June 25, 1868.

56.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the designation of the Oregon Central (East Side) Railroad Company, by the legislature of Oregon, on October 20, 1868.

57.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the construction work, previous thereto, of the Oregon Central (East Side) Railroad Company, and with the subsequent designation of said last named company by the legislature of Oregon, on October 20, 1868.

58.—The Court erred in holding that said provision as to the filing of assent attached itself to any right, title or interest of the grantee of said East Side grant, or its successors in interest, or this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, by or through any estoppel, consent, legislative obligation, covenant, condition or otherwise, because of the action of said East Side Company in filing written assent on June 30, 1869, or at any other time, or in taking any step or steps to bring the attention of Congress to the matter of such assent, or to procure any action by Congress in that behalf, if any such step or steps were taken, or in apply-

ing to Congress, if such application there was, for leave to file such assent, or otherwise, or at all.

59.—The Court erred in holding that said provision as to the filing of assent, in respect to said East Side grant, was a condition, either precedent or subsequent.

60.—The Court erred in holding that the proviso in respect to settlers in said act of April 10, 1869, was a question in the case requiring judicial determination.

61.—The Court erred in holding that any imposition by Congress under said proviso of any qualification, restriction, limitation, or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity.

62.—The Court erred in holding that any imposition by Congress under said proviso, of any qualification, restriction, limitation or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity, regard being had to the rights of the California and Oregon Railroad Company, a California corporation, under said act of July 25, 1866, and to the vested interests, accruing under said act to said last named corporation in virtue of its acceptance of said act, and its conduct, construction and expenditures thereunder and pursuant thereto.

63.—The Court erred in not holding that the Act of

Congress of July 25, 1866, pleaded in the bill of complaint in this cause, was and is a single grant, of the lands described therein, to the California and Oregon Railroad Company organized under the laws of California and to such company organized under the laws of Oregon as the legislature of the latter state should thereafter designate, for the purpose of aiding the said companies in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon.

64.—The Court erred in not holding that the said grant under said Act of Congress was entire and not severable, and upon the filing of assent to said Act in the Department of Interior by either of said companies within one year after the passage thereof and the completion of the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, the said Act became operative and vested in the company complying therewith an interest in the entire grant.

65.—The Court erred in not holding that the California and Oregon Railroad Company filed its assent to said Act in the Department of the Interior within one year after the passage thereof and completed the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, and that thereupon said act became operative and vested in said California and Oregon Railroad Company an interest in the entire grant.

66.—The Court erred in not holding that when the California and Oregon Railroad Company filed its assent to said Act of Congress of July 25, 1866, in the Department of the Interior within one year, and completed the first section of twenty miles of said railroad and telegraph line, within two years after the passage of said act, Congress was without lawful authority to annex a new condition, by amendment or otherwise, to the land grant.

67.—The Court erred in not holding that had the legislature of Oregon failed to designate a company to construct said railroad and telegraph line in Oregon, the California and Oregon Railroad Company, upon compliance with the provisions of said act of July 25, 1866, had the right and it was authorized by said act to construct the entire railroad and telegraph line from the Central Pacific in California to Portland in Oregon and thereby earn, and become entitled to, the entire land grant under said act.

68.—The Court erred in not holding that the said act of Congress of July 25, 1866, authorized the California and Oregon Railroad Company to construct any part or all of the said railroad and telegraph line provided the legislature of Oregon failed to designate a company as provided by said act, or such company failed to file its assent to said act.

69.—The Court erred in not holding that the said act of Congress of July 25, 1866, was, as to said California

and Oregon Railroad Company, a grant in presenti, of the odd sections of lands within the limits therein specified, along the line of said railroad from the Central Pacific Railroad in California to Portland in Oregon.

70.—The Court erred in not holding that at the time of the passage of the act of Congress of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had fully complied with all of the terms of said act of July 25, 1866, as amended by the act of June 25, 1868, which were required to be performed up to the time of the passage of said act of April 10, 1869.

71.—The Court erred in not holding that prior to the passage of said act of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had acquired a vested interest in the whole of the lands granted by said act of July 25, 1866, and the said act of April 10, 1869, annexing a condition to the entire grant was void.

72.—The Court erred in not holding that the said grant under the said act of Congress of July 25, 1866, being single and entire, and said act of April 10, 1869, being void as to the California and Oregon Railroad Company, as to the whole of said grant, it is void as to the portion of said grant situated in the State of Oregon.

73.—The Court erred in not holding that the said act of Congress of April 10, 1869, was void in that it re-

quires that the interest acquired by the California and Oregon Railroad Company in the lands granted by said act of July 25, 1866, shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and at a price not exceeding two dollars and fifty cents (\$2.50) per acre, as a condition of an extension of time to the company designated by the legislature of Oregon, to file its assent to said act of July 25, 1866.

74.—The Court erred in not holding that the said act of Congress of July 25, 1866, did not require that both of the companies mentioned therein should file assent to said act or construct said railroad and telegraph line, but said act was satisfied and became operative if either of the said companies filed its assent in the Department of the Interior within one year, after the passage of said act, and completed construction of its said railroad and telegraph line within the time provided in said act and the act of June 25, 1868, amendatory thereof.

75.—The Court erred in not holding that after performance by the said California and Oregon Railroad Company, of all conditions imposed by the act of July 25, 1866, and the same as amended by the act of June 25, 1868, required to be performed prior to April 10, 1869, it acquired and possessed a vested right in the whole of said land grant and Congress was thereby deprived of the power and was without authority to “add to, alter, amend or repeal” the said act of July 25, 1866, in any way that would tend to embarrass, delay or defeat the construction of either or any portion of said railroad and

telegraph line, or in any way that would tend to interfere with any vested rights in said grant.

76.—The Court erred in holding that the said proviso in respect to settlers in said act of April 10, 1869, was a condition precedent.

77.—The Court erred in holding that the said proviso in said act of April 10, 1869, was a condition subsequent.

78.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of said proviso.

79. The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition precedent.

80.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition subsequent.

81.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of any provision in said act of May 4, 1870, touching sales to actual settlers.

82.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect either to said East Side grant, or to said West Side grant, or any part thereof.

83.—The Court erred in holding that there was any

cause of action or foundation of jurisdiction in respect to either of said grants, in any re-entry for breach of condition, to legislative equivalent thereof, or in any legislative declaration of forfeiture.

84.—The Court erred in holding that there was jurisdiction in the Court on the equity side of the cause or subject matter of this suit, and in not dismissing the bill of complaint.

85.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture of said East Side grant for the breach of an assumed condition subsequent, if such breach there was, in said proviso of said act of April 10, 1869.

86.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

87.—The Court erred in holding that the complainant was entitled to a decree quieting its title to either of said grants against this defendant, said Oregon and California Railroad Company, said Stephen T. Gage, individually or as trustee, and said Union Trust Company, individually or as trustee, or any or either of them, or any party to the cause.

88.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any

part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company, or its grantees, if such there were, did not have the legal title to such grants.

89. The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the complainant was in possession of the said grants, or either of them, or any part thereof; and in holding that the said Oregon and California Railroad Company, or its grantees, if such there were, did not have the possession of the same.

90.—The Court erred in holding, as foundation for a suit by complainant to quiet its title to the said grants or either of them, or any part thereof, that the same had not been reduced to possession, and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

91. The Court erred in holding that at the time of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, said Oregon and California Railroad Company, or its grantees, if such there were, did not have possession of the said grants, or either of them.

92.—The Court erred in not holding that at the time of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, said Oregon and California Railroad Company had

legal title and possession of all the lands of which forfeiture is sought by said bill of complaint against this defendant, and said Oregon and California Railroad Company, and Stephen T. Gage, individually and as trustee, and against said Union Trust Company, individually and as trustee.

93.—The Court erred in holding that the said proviso of said act of April 10, 1869, or any provision of said act of May 4, 1870, touching actual settlers in anywise or at all affected the title to the lands, or any part thereof, either of said East Side or of said West Side grant.

94.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

95.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

96.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side grant, that any breach of such assumed

condition subsequent or any assumed cause of forfeiture, had not been acquiesced in by Congress and complainant.

97.—The Court erred in holding, on the assumption of a condition subsequent in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been acquiesced in by Congress and complainant.

98.—The Court erred in holding on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to the said East Side grant, that as to any breach of such assumed condition subsequent, or assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

99.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side grant, that as to any breach of such assumed condition subsequent, or any assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

100.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, and said provision in said act of May 4, 1870, is a

condition subsequent, that Congress and the complainant have waived the breach thereof by acquiescence in the many deeds of conveyance made by said Oregon and California Railroad Company, with the knowledge of Congress and complainant.

101.—The Court erred in not holding, on the assumption that the proviso in the said act of April 10, 1869, and said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acceptance and use of the said railroad.

102.—The Court erred in not holding, on an assumption that the said proviso in the said act of April 10, 1869, and said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by annual issuance of patents to said lands from 1871 down to 1906.

103.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, and said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by the passage by Congress of the Forfeiture Acts of January 31, 1885, and September 29, 1890.

104.—The Court erred in not holding that this suit as to all lands patented prior to October, 1902, was and is barred by the Acts of Congress of March 3, 1891, and

March 2, 1896.

105.—The Court erred in not holding that all causes of action presented by the bill of complaint herein are barred by laches and the Statute of Limitations.

106.—The Court erred in holding that the primary and controlling purpose of Congress in the act of July 25, 1866, and acts amendatory thereof, was to provide for the sale of the granted land to actual settlers, or in that behalf that said lands were capable of actual settlement.

107.—The Court erred in not holding that the primary object of the act of April 10, 1869, was to extend the time for the construction of the said railroad and not to impose a condition or trust upon the grant already made.

108.—The Court erred in not holding that the proviso for the sale of the lands granted to actual settlers, contained in the act of April 10, 1869, and the provision as to settlers in the act of May 4, 1870, are, and each of them is, void because the same is repugnant to the grant and tends to defeat and destroy the primary purpose and intent of Congress in making the said grants in aid of the construction of the said railroads and telegraph lines.

109.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said lands to actual settlers, was intended only to apply to such actual settlers as were, at the dates of the acts of July

25, 1866 and May 4, 1870, in the actual possession of said portions of said granted lands or who might become actual settlers before the filing of the map of survey.

110.—The Court erred in not holding, on the assumption that the said provisions in the said acts of April 10, 1869 and May 4, 1870, for the sale of said granted lands to actual settlers, were conditions subsequent, that Congress and complainant waived any breach of said provisions of right to forfeiture by:

(a) Permitting the said grants to be administered by the grantees and their successors for a period of over thirty-eight years prior to the passage of the joint resolution of April 3, 1908, and prior to the commencement of this suit on the 4th day of September, 1908, with the knowledge of Congress and complainant; and

(b) The passage of the act of June 25, 1868; and

(c) The passage of the forfeiture act of January 31, 1885; and

(d) The repeated refusal of Congress to pass any other forfeiture act than the general statute on that subject; and the forfeiture act of September 29, 1890; and

(e) The continuous and regular issuance by complainant of patents to said granted lands.

111.—The Court erred in not holding, on the assumption that the act of July 25, 1866, constituted and

was a single grant and so as to the West Side Grant, both or either, that a waiver on the part of Congress and the complainant of any breach of the proviso or clause as to sales to settlers in said grants, or either of them, and of forfeiture on account thereof as to a portion of the same with knowledge on the part of Congress and the complainant, was a waiver as to the entire grants, both or either.

112.—The Court erred in not holding, on the assumption that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to sales of said granted lands to actual settlers, are conditions subsequent, that each of said conditions subsequent is void for the following reasons:

(a) It is retroactive and its effect would be to divest the title of said Oregon and California Railroad Company; and

(b) It is in restraint of and prohibits alienation except as to a particular class of persons; and

(c) The restraint on alienation is inconsistent with the purpose of the grant and the estate granted; and

(d) The said condition does not fix a definite time within which any of the lands shall be sold to actual settlers; and

(e) The said condition does not define who is an actual settler; and

(f) The sale of said lands is wholly dependent upon there being actual settlers thereon, an uncertain event, and the restraint contained in said provisions amounts to a perpetuity; and

(g) Because said conditions do not contain any clause of re-entry or forfeiture for a violation thereof.

113.—The Court erred in not holding that the complainant by its conduct in relation to the lands granted by said acts of Congress has waived, and is estopped from claiming, a forfeiture thereof.

114.—The Court erred in not holding that the grantees under said acts of Congress or their successors, associates or assigns, had the right to mortgage the whole or any part of said land grant to obtain money wherewith to construct the said railroad and telegraph line.

115.—The Court erred in not holding that under the terms and provisions of the said act of Congress of April 10, 1869, and of May 4, 1870, the grantee or grantees mentioned in said land grants cannot and could not perform the said provisions as to the sale of the lands granted to actual settlers and by reason thereof, performance of said provisions was excused and the said granted lands vested in said grantees absolutely and discharged of said conditions.

116.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to the sale of the lands granted by said acts to actual settlers, was and is unilateral and

void in that actual settlers are not bound to purchase and the grantees under said grants could not compel settlers to purchase any portion or portions thereof.

117.—The Court erred in not holding that the grantee or grantees under said land grants in any event were required to sell to actual settlers only during the construction of the said railroad.

118.—The Court erred in not holding that during the period of construction of said railroad there were no actual settlers on any portion of said land grants and for that reason a sale thereof could not be made to actual settlers in any quantity, and by reason thereof the said grantee or grantees under said land grants took the same discharged of any provision for the sale thereof to actual settlers.

119.—The Court erred in not holding that during the construction of said railroad it was impossible for the said grantee or grantees under said land grants to sell any portion of said grants to actual settlers, and that by reason thereof such sale was excused and the title to said granted land in Oregon, and the whole thereof, vested in the said Oregon and California Railroad Company.

120.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, if and when operative, was directive to the said Oregon and California Railroad Company to sell to actual settlers, only, land in quantities

not greater than one quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents (\$2.50) per acre, and did not prohibit the sale of said granted lands to persons other than actual settlers in any quantity and at any price.

121.—The Court erred in not holding that the purpose of the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said granted lands to actual settlers in quantities not exceeding one quarter section to each purchaser and at a price not exceeding two dollars and fifty cents (\$2.50) per acre, was to give to actual settlers an option to purchase lands in said grants on said terms and not intended to prohibit the said Oregon and California Railroad Company from selling the lands in said grants to others than actual settlers in any quantity and at any price.

122.—The Court erred in not holding that Congress, in passing the act of April 10, 1869, and the act of May 4, 1870, contemplated two classes of persons to whom said granted lands would be sold in aid of the construction of said railroad, namely, actual settlers in possession of some portion of said grant, and persons who are not actual settlers and who are not in possession of any portion of said grant.

123.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, are, and each of them is, in restraint of alienation and void in that:

(a) It limits the time during which the property can be held by the grantee.

(b) It provides for the alienation to a limited class of persons.

(c) It limits the amount of land which may be sold to any one person.

(d) It limits the price at which it can be sold.

124.—The Court erred in holding that the said land grants did not become operative until the Railroad Company filed its assent to the terms and conditions of Section Six of the act of July 25, 1866, as amended April 10, 1869.

125.—The Court erred in holding that issuance of patents to said lands by the land department was not a waiver on the part of the complainant of the right to insist upon the performance by the Railroad Company of the provisions in said grants as to the sale of lands to actual settlers.

126.—The Court erred in holding that the act of Congress of April 10, 1869, was a renewal or revival of the grant under the act of Congress of July 25, 1866, or that the said act of April 10, 1869, was other than a waiver of the right of forfeiture on account of any of the conditions in said grant.

127.—The Court erred in holding that at the time of the passage of the said act of Congress of April 10, 1869, the said land grant under the act of Congress of July

25, 1866, had lapsed.

128.—The Court erred in not holding that this suit cannot be maintained as one to enforce forfeiture nor to quiet title because—

(a) Neither the United States nor Congress has declared a forfeiture; and

(b) The fact of forfeiture has not been adjudicated by a court of law; and

(c) The defendant, Oregon and California Railroad Company, holds legal title to and the possession of said granted lands.

129.—The Court erred in not holding that the said defendant, Oregon and California Railroad Company, was entitled to a trial by jury of the issue as to whether or not any of the conditions of said grants, or either of them, had been breached.

130.—The Court erred in not holding that the complainant and Congress had knowledge of all the alleged breaches of the provisions in each case of said land grants for the sale of the granted lands to actual settlers; and that the complainant and Congress acquiesced in said breaches, and with the knowledge thereof, and complainant is estopped to claim a forfeiture of the said land grant, or any part thereof.

131.—The Court erred in not holding that during the year 1879, down to and including the year 1903, reports were regularly and semi-annually made of the

transactions of the land department of said defendant Oregon and California Railroad Company, to the Auditor of Railroad Accounts, created by the act of Congress of June 19, 1878, showing the total cash receipts from all sales of the said granted lands to the date of said report; the average price per acre for all sales to the date of said report, and the average price per acre for all sales during the half year; the average price per acre for all purchases to the date of said report; the maximum price per acre from sales (not town lots); the minimum price per acre from sales (not town lots); the maximum price per acre asked at the time of making such reports; the minimum price per acre asked at the time of making such report; and that the Auditor of Railroad Accounts, pursuant to the provisions of the said act of Congress of June 19, 1878, made like annual reports during the whole of said period to the Secretary of the Interior, and that annually during the whole of said period the Secretary of the Interior transmitted the said reports to Congress, and that said reports showed that during the year 1879, down to and including the year 1903, the said defendant, Oregon and California Railroad Company, sold some of said granted lands at a price in excess of two dollars and fifty cents (\$2.50) per acre; also in quantities exceeding one hundred and sixty (160) acres; and that Congress and complainant, with the knowledge of the said matters and things contained in said reports, acquiesced therein and permitted the said defendant railroad company to take action accordingly and to alter its position and to continue to so administer

said grant and that complainant was, and is, therefore, estopped from claiming a breach of any of the conditions, if such there be, in said grant, or a forfeiture on account thereof, and has waived said alleged breaches and acquiesced therein.

132.—The Court erred in not holding that the complainant was estopped by the acts of the Secretary of the Interior in approving as bases of lieu land selections, deeds conveying property sold in alleged violation of the said provisions in said grants as to the sale of said granted lands to actual settlers, only.

133.—The Court erred in holding that the “East Side Company,” so-called, by accepting the grant under the act of Congress of July 25, 1866, as amended by the act of April 10, 1869, was estopped from denying the right or power of Congress to pass an act imposing any conditions repugnant to the original grant.

134.—The Court erred in not holding that the act of Congress of July 25, 1866, granting the lands therein described to aid in the construction of a railroad and telegraph line, without any direction as to the manner of sale or disposition thereof, to aid in such construction, said railroad company had the right to sell or mortgage the whole of said granted lands for such purposes.

135.—The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to the decree rendered herein.

136.—The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered herein.

137.—The Court erred in not holding that the evidence in the above entitled cause was wholly insufficient to sustain and support the decree rendered in said cause, in that there is no evidence in the record showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of said granted lands to actual settlers, only, in quantities not exceeding one hundred and sixty (160) acres to one purchaser and at a price not exceeding two dollars and fifty cents (\$2.50) per acre.

138.—The Court erred in not holding that the evidence in said cause was insufficient to support the decree rendered herein or any decree in favor of complainant in that there is no evidence in this cause showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of the said granted lands to actual settlers.

139.—The Court erred in not holding that the evidence in this cause was wholly insufficient to sustain the decree rendered herein or any decree in favor of complainant, in that there was no evidence on which to base a decree of forfeiture of the lands or estates in lands described in the bill of complaint herein, for any alleged breach of any condition in either of said acts of Con-

gress.

140.—The Court erred in rendering the judgment and decree herein against the said defendants, Southern Pacific Company, Oregon and California Railroad Company, Stephen T. Gage, individually or as trustee and Union Trust Company, individually or as trustee, or any or either of them, forfeiting the lands and estates in lands described in the said decree, or any of said lands, in that there is no evidence whatever in the record in this cause showing that the said defendant, Oregon and California Railroad Company, violated or breached any condition in either of the said acts of Congress of July 25, 1866, June 25, 1868 or April 10, 1869, or May 4, 1870.

141.—The Court erred in holding that the patents issued in respect to the said land grants, or either of them, or any part thereof, were not conclusive against complainant as to any breach of assumed condition subsequent, or any forfeiture resulting therefrom, or from any cause whatever.

142.—The Court erred in holding that the title to so much of either of said grants as had been patented was not concluded against complainant herein by the acts of Congress of March 3, 1891 and March 2, 1896.

143.—The Court erred in holding that the title to so much of either of said grants as had been patented prior to October, 1902, was not concluded against complainant herein and that the alleged cause of action had not been

barred, and the title to such patented lands made absolute.

144.—The Court erred in holding that the grant of lands under the act of July 25, 1866, had lapsed at the time of the passage of the act of Congress of April 10, 1869; and at the same time holding that the proviso in said act of April 10, 1869, for the sale of said granted lands to actual settlers, is a condition subsequent, and in not holding in such behalf that a condition subsequent must attach to a title or grant previously existing, or to a title or grant created at the same time the condition subsequent is imposed.

145.—The Court erred in not holding that a condition subsequent which may defeat a grant, if breached, must be imposed in the same act creating the grant, or if imposed in a subsequent act, then the act creating the grant must reserve the right to impose or annex such condition.

146.—The Court erred in not holding that the act of Congress of April 10, 1869, was not a new grant or a revival of the old grant, but a waiver of a right to forfeiture of the grant already made under the act of July 25, 1866.

147.—The Court erred in not holding, assuming the said "actual settler" clause in each of said acts of Congress to be a condition subsequent and certain and definite, so as to be enforceable, that it was repugnant to the grant and is void.

148.—The Court erred in not holding that if actual settlers did not apply to purchase the granted lands and if they were not sold by or before the time following completion and acceptance of the road, then, and thereafter the said “actual settler” clause in each of said acts became inoperative and whether the words of the “actual settler” clause created a covenant or condition, the railroad company took an estate in the unsold lands absolute and unconditional.

149.—The Court erred in not holding that it is the duty of the land department of the United States to administer the land laws thereof and to determine in the first instance who are “actual settlers;” and that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, in that regard, are and each of them is void and that it was beyond the power of Congress to impose upon the railroad company a function belonging exclusively to the land department of the United States.

150.—The Court erred in not holding that the said provisions in the act of April 10, 1869, and the provisions in the act of May 4, 1870, as to the sale of such lands to actual settlers are and each of them is void in that no method or procedure is provided in either of said acts whereby it can be determined who are actual settlers within the meaning of either of said provisions; and the question as to who are actual settlers upon such granted lands is a question committed by the laws of the United States to the land department thereof.

WHEREFORE, this defendant, Southern Pacific

Company, prays that the said decree herein—except so much thereof as—(1) dismisses the cross-complaints of the defendants-cross-complainants and the complaints in intervention of the interveners-defendants, and, (2) adjudges that the complainant's prayer for an accounting be denied, and, (3) excepts from the operation of the decree all right of way and station grounds, as established and in actual use at the date of said decree in the operation of said Oregon and California Railroad Company's railroad, and, (4) provides that the said decree shall not apply to reservations or exceptions, in contracts or deeds of conveyance, executed by or on behalf of this defendant in the sale of any lands granted by the aforesaid act of July 25, 1866, as amended, or by said act of May 4, 1870, of right of way for the main track of the railroad of said Oregon and California Railroad Company, as actually constructed, established, and in operation at the date of said decree—be reversed, and that this Court enter a decree in accordance with the prayer of the answer and amendments thereto of this defendant, and the defendants, Oregon and California Railroad Company, and Stephen T. Gage, individually and as trustee, filed herein, and adjudging that the bill of complaint herein be dismissed, and for such other relief to this defendant, said Oregon and California Railroad Company and said Stephen T. Gage, individually and as trustee, and said Union Trust Company, individually and as trustee, as may be proper.

P. F. DUNNE,
WM. D. FENTON and
JAMES E. FENTON.

Wm. F. Herrin,
Of Counsel.

Solicitors and attorneys for said defendant, Southern Pacific Company.

Service of the foregoing assignment of errors admitted this 29th day of Aug. 1913.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prah, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &
BURKHEIMER,

Successors to

SHEPARD & FLETT;
JOHN E. BURKHEIMER,
CHARLES E. SHEPARD,
C. I. LEAVENGOOD,
JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,
LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervenor Luther E. Trowbridge.

A. C. WOODCOCK,
GEO. W. WRIGHT,

Solicitors and Attorneys for the said intervenors George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said intervenors Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,
JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,
CLAUDE STRAHAN,
LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thomson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

District of Oregon)
) ss.
County of Multnomah)

Due service of the within Asst. of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of August, 1913, by receiving a copy thereof, duly certified to.

JAS. C. McREYNOLDS, Attorney General,
B. D. TOWNSEND, Spl. Asst. to Atty. Genl.
By GLENN E. HUSTED, Spl. Asst. to Atty. Genl.
Attorneys for Complainant.

CLARENCE L. REAMES,
United States Attorney,
By Robert R. Rankin,
Assistant United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon,
Clerk United States District Court.

And on August 29, 1913, there was duly filed in said court Assignment of Errors of John L. Snyder, et al., Sidney Ben Smith, et al, Milo F. Dennis, et al, Wm. E. Carter, et al, Wm. McLeod, et al, Arthur L. Golder, et al defendants-cross-complainants, in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED
STATES, FOR THE DISTRICT OF
OREGON.

THE UNITED STATES OF AMER-)
ICA, Complainant.)

vs.)

THE OREGON & CALIFORNIA)
RAILROAD CO., THE SOUTH-)
ERN PACIFIC RAILROAD)
COMPANY, STEPHEN T.)
GAGE, Individually, and as trustee,)
and the UNION TRUST COM-)
PANY, individually and as trustee,)
John L. SNYDER, et al., defendants,)
cross-complainants, and FRANK)
TERRACE, et al., interveners, de-)
fendants, Defendants.)

NO. 3340 IN EQUITY.

ASSIGNMENTS OF ERRORS.

JOHN L. SNYDER et al, and SIDNEY BEN SMITH, et al., defendants-cross-complainants, and JOHN BURBEE, et al.; MILO F. DENNIS, et al; WILLIAM E. CARTER, et al.; WILLIAM Mc-

LEOD, et al, and ARTHUR L. GOLDER, et al, intervenors,, defendants, complain of errors in the proceedings in this case in the District Court of the United States, for the District of Oregon, and in the decision and decree rendered, made, and entered therein, and assign the following as the errors complained of:

1. The court erred in holding that the lands, or any thereof, described in the bill of complaint, and decree, were, or had been, forfeited to the complainant, and that a decree be entered forfeiting such lands or any thereof to the complainant.

2. The court erred in holding that the title of complainant to the said lands or any thereof should be quieted.

3. The court erred in holding that complainant was entitled to recover its costs and disbursements herein, of and from these defendants, cross-complainants, and intervenors, defendants, or any of them.

4. The court erred in sustaining the demurrers of the defendants the Oregon & California Railroad Co., the Southern Pacific Co., Stephen T. Gage, individually, and as trustee, and the Union Trust Company, individually and as trustee, to the cross complainants and bills of intervention, of all or any of these defendants, cross-complainants, and interveners defendants.

5. The court erred in sustaining the motion of complainant to dismiss all or any of the cross-complaints,

and petitions and bills of intervention of these defendants cross-complainants, and intervenors defendants.

6. The court erred in holding that all of any of the cross-complaints, petitions, and bills in intervention, of these defendants cross-complainants, and intervenors, defendants, were without equity, and did not state a cause of suit against the above named defendants, and the complainant herein.

7. The court erred in dismissing all or any of the cross-complaints, petitions, and bills of intervention of these defendants cross-complainants, and intervenors defendants.

8. The court erred in not holding that each and all of the cross-complaints, petitions, and bills in intervention, of these defendants cross complainants, and intervenors defendants, stated and showed good and sufficient causes of suit against the above named defendant, and the above named complainant, and entitled each and all of said defendants cross-complainants, and intervenors defendants, to the relief therein prayed for.

9. The court erred in not holding that each of the above named defendants, and the above named complainant should be required to answer all and singular, the cross-complaints, petitions, and bills in intervention of these defendants cross-complainants, and intervenors defendants.

10. The court erred in holding that the complain-

ant is the owner in fee simple, or is in possession of the lands described in the bill of complaint herein, or any thereof.

11. The court erred in not holding that the defendant the Oregon & California Railroad Company, is the owner in trust of the lands described in the bill of complaint herein, and particularly of those portions thereof described in the cross complaints and petitions and bills of intervention of these defendants cross-complainants, and intervenors defendants, in trust for the use and benefit of the actual settlers, and for the use and benefit of these defendants cross-complainants, and intervenors defendants.

12. The court erred in not holding that under and by virtue of the terms and conditions of the act of Congress 1869 entitled "An act to amend an act Entitled 'An act granting lands to aid in the construction of a Railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,'" and under and by virtue of the terms and conditions of the act of May 4th 1870 entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Portland, to Astoria and McMinnville in the State of Oregon," the defendant Oregon & California Railroad Company, and all persons taking and holding any of said lands or any interest therein, by through or under it, save and except the actual settlers purchasing the same in quantities not exceeding 160 acres to any one settler and at prices not exceeding \$2.50 per

acre took and held all of the lands described in the bill of complaint herein, and particularly the lands described in the cross complaints, and bills in intervention of these defendants cross-complainants, and intervenors defendants, in trust for the use and benefit of such persons as might become actual settlers on any quantity thereof up to 160 acres, and in not holding that the terms and conditions of said trust were such, that when, and in the event any person settled upon any quantity of said lands not exceeding 160 acres, and tendered and offered to the defendant the Oregon and California Railroad Company or its representatives the sum of \$2.50 an acre therefor, it became, and was, the legal duty and obligation of said defendant to accept such sum so tendered in full payment for said lands, and to execute a deed conveying the said land so settled upon and paid for in fee simple to such settler.

13. The court erred in holding that the primary and ultimate purpose of congress in granting the lands hereinbefore mentioned was to secure the settlement thereof by citizens of the United States in quantities as great as 160 acres to each settler, and no greater, and to secure to the citizens of the United States so settling thereon, the right and privilege to purchase the lands so settled upon at a price as low as \$2.50 per acre, and in not holding that any person becoming a settler upon such lands in the quantities aforesaid, and tendering the aforesaid price thereof to the said defendant the Oregon & California Railroad Company became and was the owner of an equitable interest and estate in the said lands,

and became and was entitled to a decree of said court directing and requiring that said lands so settled upon be conveyed to him upon the payment aforesaid.

14. The court erred in not holding that to now decree a forfeiture of all, or any, of the lands described in the bill of complaint herein is to defeat the purpose and intent of congress in making the grants aforesaid, and is to withdraw the said lands from settlement, when it was the purpose and intent of congress that the same should be settled.

15. The court erred in holding that the grants aforesaid are in any respect lacking in the elements of a trust, or that the terms used in said grant are in any respect indefinite or uncertain as to the conditions upon which the said lands were therein required to be sold, or as to the quantities in which the same were therein to be sold, or as to the persons to whom the same were therein to be sold.

16. The court erred in not construing the term "actual settlers" in the light of congressional enactments adopted prior to the land grants aforesaid, and in the light of the land policy existing in the United States at the time of the making of such grants, to mean, and to specify any person who had chosen to settle upon a quantity of lands subject to settlement as great but not greater as 160 acres by legal subdivisions, and who resided upon such lands, and made the same his home.

17. The Court erred in not giving to the term

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tual settler" the settled judicial meaning, and con-
junction that the same had in the country at the time
the adoption of said land grants.

18. The court erred in not holding that at the
re of the adoption of said land grants the term "actual
tler" had a definite and certain legislative and judi-
l meaning, which meaning was intended to be, and
s incorporated into and a part of said land grants, and
ich meaning was of such a nature that whenever the
d term was used in legislative action, the same meant
d implied, and should now be construed to mean and
ply any person occupying and making a home of as
ge a tract as such person desired up to 160 acres
legal subdivisions of lands subject to settlement.

19. The court erred in holding that the proviso in
e act of April 10, 1869, hereinbefore mentioned was
condition subsequent, or operated otherwise than to
eate a trust in favor of such persons as should there-
ter become actual settlers upon the lands therein grant-
l, and in favor of these defendants cross complainants,
n intervenors defendants.

20. The court erred in holding that any provision
t the act of May 4th 1870 touching sales to settlers was
condition subsequent, and operated otherwise than to
eate a trust as hereinbefore described.

21. The court erred in holding that the consequence
nd penalty of forfeiture was attached by congress to
a breach of the conditions of said grant, and in not hold-

and became and was entitled to a decree of said court directing and requiring that said lands so settled upon be conveyed to him upon the payment aforesaid.

14. The court erred in not holding that to now decree a forfeiture of all, or any, of the lands described in the bill of complaint herein is to defeat the purpose and intent of congress in making the grants aforesaid and is to withdraw the said lands from settlement, while it was the purpose and intent of congress that the said lands should be settled.

15. The court erred in holding that the grants aforesaid are in any respect lacking in the elements of a trust or that the terms used in said grant are in any respect indefinite or uncertain as to the conditions upon which the said lands were therein required to be sold, or as to the quantities in which the same were therein to be sold, or as to the persons to whom the same were to be sold.

16. The court erred in not construing the "actual settlers" in the light of congressional enactments adopted prior to the land grants aforesaid, and in the light of the land policy existing in the United States at the time of the making of such grants, to mean to specify any person who had chosen to settle upon a quantity of lands subject to settlement as great as or greater as 160 acres by legal subdivisions, and who resided upon such lands, and made the same his home.

17. The Court erred in not giving to the term

“actual settler” the settled judicial meaning, and construction that the same had in the country at the time of the adoption of said land grants.

18. The court erred in not holding that at the time of the adoption of said land grants the term “actual settler” had a definite and certain legislative and judicial meaning, which meaning was intended to be, and was incorporated into and a part of said land grants, and which meaning was of such a nature that whenever the said term was used in legislative action, the same meant and implied, and should now be construed to mean and imply any person occupying and making a home of as large a tract as such person desired up to 160 acres by legal subdivisions of lands subject to settlement.

19. The court erred in holding that the proviso in the act of April 10, 1869, hereinbefore mentioned was a condition subsequent, or operated otherwise than to create a trust in favor of such persons as should thereafter become actual settlers upon the lands therein granted, and in favor of these defendants cross complainants, an intervenors defendants.

20. The court erred in holding that any provision in the act of May 4th 1870 touching sales to settlers was a condition subsequent, and operated otherwise than to create a trust as hereinbefore described.

21. The court erred in holding that the consequence and penalty of forfeiture was attached by congress to a breach of the conditions of said grant, and in not hold-

ing that the proper relief in the event there should be a breach of said conditions was the enforcement by the means usually employed in such cases by courts of equity of the terms and conditions of the trust aforesaid.

22. The court erred in holding that the consequences and penalty of forfeiture was attached by congress to a breach of said conditions, should such there be, or of any provision in said act of May 4th 1870, touching sales to actual settlers, and in not holding that the appropriate remedy for such breach was the enforcement by the means usually employed by courts of equity in such cases of the terms and conditions of the trust aforesaid.

23. The court erred in holding that these defendants cross complainants, and intervenors defendants, had no right, title, or interest in or to the lands described in the bill of complaint herein, and particularly the lands described in the cross complaints, and bills in intervention of these defendants cross complainants, and intervenors defendants, and that the title of complaint to such lands should be quieted.

24. The court erred in holding that the complainant was in possession of all, or any, of the lands described in the cross complaints, and bills of intervention, of these defendants cross-complainants, and intervenors defendants, and in not holding that these defendants cross-complainants, and intervenors defendants were, and have been for a long time prior to the filing of the bill of complaint of the complainant herein in posses-

sion of all and singular the lands described in said cross complaints and bills of intervention.

WHEREFORE, these defendants cross complainants, and intervenors defendants, pray that the decree herein be reversed, and that this court enter a decree in accordance with the prayer of the cross complaints and bills of intervention filed herein, and for such other relief as to these defendants cross-complainants, and intervenors defendants may be proper.

A. W. LAFFERTY,

Attorneys for Defendants cross-complainants, and Intervenors Defendants.

Service of the foregoing assignments of error is hereby acknowledged this 29th day of August, 1913.

PETER F. DUNNE,

WM. D. FENTON, and

JAMES E. FENTON,

Attorneys for Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as Trustee.

MILLER, KING, LANE and TRAFFORD,

DOLPH, MALLORY, SIMON and GEARIN,

JOHN C. SPOONER, JOHN M. GEARIN,

Attorneys for Union Trust Company of New York, individually and as Trustee.

Service of the foregoing assignment of errors admitted this 29th day of Aug. 1913.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,
LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervenor Luther E. Trowbridge.

A. C. WOODCOCK,
GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

DAY & BREWER,**JNO. MILLS DAY,**

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,
JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,
CLAUDE STRAHAN,
LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER DANHOFF, and
H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thomson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

DISTRICT OF OREGON,)
) ss.
County of Multnomah.)

Due service of the within Assignment of Errors is hereby accepted in Multnomah County, Oregon, this 27th day of Aug., 1913.

J. C. McREYNOLDS, Atty. Genl., and

B. D. TOWNSEND, Spl. Asst. to Atty Genl.

By GLENN E. HUSTED,

Spl. Asst. to Attorney General,

Attorney for United States.

CLARENCE L. REAMES, United States Attorney.

By ROBERT R. RANKIN,

Asst. United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon,
Clerk United States District Court, By V. Johnston,
Deputy.

And afterwards, on August 29, 1913, there was duly filed in said Court Assignment of Errors of the defendant Oregon and California Railroad Company, as follows, to-wit:

[T I T L E]

DEFENDANT OREGON AND CALIFORNIA
RAILROAD COMPANY'S ASSIGNMENT
OF ERRORS.

The defendant, Oregon and California Railroad Company, complains of errors in the proceedings in this case, in the District Court of the United States, for the District of Oregon, in the above entitled cause, and in the decision and decree rendered, made and entered therein, and assigns the following as the errors complained of:

1.—The Court erred in overruling the demurrer of this defendant to the bill of complaint herein.

2.—The Court erred in overruling and in not sustain-

he following grounds of the joint and several de-
er of the defendants, Oregon and California Rail-
Company, Southern Pacific Company, and Stephen
age, individually and as trustee, to the bill of com-
t of complainant herein:

As against the said defendants and each of them the
bill of complaint is without equity and cannot be
ntained as to the "East Side Grant," so-called in
bill of complaint and subject thereof.

3.—The Court erred in overruling and in not sus-
ining the following grounds of the joint and several
murrer of the said defendants to the bill of complaint
complainant herein:

As against the said defendants and each of them
said bill of complaint is without equity, and cannot
maintained as to the "West Side Grant," so-called
said bill of complaint and subject thereof.

4.—The Court erred in overruling and in not sus-
ining the following grounds of the joint and several
emurrer of the said defendants to the bill of complaint
f complainant herein:

As against the said defendants and each of them the
aid bill of complaint is without any equity whatsoever.

5.—The Court erred in overruling and in not sus-
aining the following grounds of the said joint and sev-
eral demurrer of the said defendants to the bill of com-
plaint of complainant herein, and in not holding and
deciding that:

(Endorsed) Filed August 29, 1913, A. M. Cannon,
Clerk United States District Court, By V. Johnston,
Deputy.

And afterwards, on August 29, 1913, there was duly filed in said Court Assignment of Errors of the defendant Oregon and California Railroad Company, as follows, to-wit:

[T I T L E]

DEFENDANT OREGON AND CALIFORNIA
RAILROAD COMPANY'S ASSIGNMENT
OF ERRORS.

The defendant, Oregon and California Railroad Company, complains of errors in the proceedings in this case, in the District Court of the United States, for the District of Oregon, in the above entitled cause, and in the decision and decree rendered, made and entered therein, and assigns the following as the errors complained of:

1.—The Court erred in overruling the demurrer of this defendant to the bill of complaint herein.

2.—The Court erred in overruling and in not sustain-

ing the following grounds of the joint and several demurrer of the defendants, Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as trustee, to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without equity and cannot be maintained as to the "East Side Grant," so-called in said bill of complaint and subject thereof.

3.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without equity, and cannot be maintained as to the "West Side Grant," so-called in said bill of complaint and subject thereof.

4.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without any equity whatsoever.

5.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "East Side Grant," so-called in said bill of complaint, and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the said "East Side Grant."

6.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "West Side Grant," so-called in said bill of complaint and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the "West Side Grant."

7. The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree declaring or adjudging forfeiture of all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

8.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree quieting the title to all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

9.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree or order requiring the defendants or any of them to surrender unto complainant possession or control of lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the said bill of complaint herein.

10.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction requiring the said defendants, or any of them, to do or perform any of the acts or things set forth or mentioned in paragraph 3 of subdivision First of the prayer of the bill of complaint herein.

11.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order or decree asked for in the Second subdivision of the prayer of the bill of complaint herein:

12.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order asked for or mentioned in the Fifth subdivision of the prayer of the bill of complaint herein.

13.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief whatsoever.

14.—The Court erred in holding that the United States, complainant herein, was entitled to the relief prayed for in its complaint herein, or to any relief, and in not holding that the said complaint of said complainant should be dismissed.

15.—The Court erred in holding that the complainant had any right, title or interest in or to the lands described in the decree herein, or any part thereof.

16.—The Court erred in holding that the complainant is the owner in fee simple, or in the possession of said lands, or any part thereof, or entitled to the possession of the same, or any part thereof.

17.—The Court erred in holding that the defendant, the Oregon and California Railroad Company, was not the owner in fee simple and in the possession, and entitled to the possession of said lands, and the whole thereof.

18.—The Court erred in holding that the allegations in said bill of complaint were sustained by the evidence, and in not holding that said bill should be dismissed.

19.—The Court erred in holding that the lands or any thereof, described in the decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any thereof, to the complainant.

20.—The Court erred in holding that the lands and estates in lands in the said decree described, either in whole or in part have become or now are forfeited to, or that the title to the same or any part thereof, has reverted to and now is revested in the United States of America, or that the same or any part thereof now are the absolute property of the United States of America,

or are free from any or all claim or claims of right, title or interest or lien in, to, or upon the same or any part thereof by or in favor of this defendant, or the defendant Southern Pacific Company, or the defendant Stephen T. Gage, individually or as trustee, or the defendant Union Trust Company, individually or as trustee, or any party or parties claiming under them, or either or any of them.

21.—The Court erred in holding that the title of complainant to the said lands, or any thereof, should be quieted.

22.—The Court erred in holding that the title of the United States of America to all or any of said lands or estates in lands be or is by said decree quieted or confirmed, or be or is so quieted or confirmed, particularly as to any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, by or in favor of this defendant, or the said Southern Pacific Company, or the said Stephen T. Gage, individually or as trustee, or the said Union Trust Company, individually or as trustee, or each or every party or parties claiming under them, or either or any of them.

23.—The Court erred in holding that complainant was entitled to recover its costs and disbursements herein, and that a decree should be entered to that effect.

24.—The Court erred in holding that:

The complainant herein was or is entitled to any injunction or restraining order in this cause.

25.—The Court erred in holding that this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or the officers or agents of them, or any or either of them, be, or that they, or any or either of them by said decree are or is forever, or at all, enjoined or restrained from claiming or asserting, or from claiming or asserting in any manner any right, title, interest or lien in, to, or upon the said lands, or estates in lands, or any part thereof, or from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein, or from negotiating, executing, or recording any document or instrument, or from doing any other act or thing which shall in any manner affect or encumber the title to said lands or estates in lands or any part thereof, or from going upon said lands, or any part thereof, or from cutting, removing or in any manner using or injuring any timber or other natural products thereof, or from committing in any manner trespass upon said lands, or any part thereof, or from using or interfering with in any manner said lands or estates in lands, or any part thereof, or the title or possession thereof, or from contracting with, inviting or inducing, or permitting, or in any manner whatsoever permitting others, or any party to do any of the things aforesaid.

26.—The Court erred in holding as to all or any lands which may hereafter revert, as in paragraph IV of said decree set forth, to this defendant, or to said Southern

Pacific Company, or to said Stephen T. Gage, individually or as trustee, or to said Union Trust Company, individually or as trustee, that this defendant, or the said Stephen T. Gage, or the said Union Trust Company, or any or either of them, shall within sixty days, or any other period of time, from the date that any of said lands shall so revert to said defendants, or any or either of them, or at all, execute or file with the clerk of said court, or otherwise, or at all, any deed of conveyance in due or legal form, or at all, conveying or confirming unto the United States of America all or any of said lands, free from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or either or any of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed or deeds of conveyance, said decree shall operate or shall have the same force or effect as such deed or deeds of conveyance.

27.—The Court erred in holding that within sixty days or any other time, from the date of said decree, or otherwise or at all, this defendant, or said Union Trust Company or said Stephen T. Gage, or any or either of them, shall execute or deliver to the clerk of said court, or otherwise, or at all, a deed of conveyance in due or legal form, or at all, conveying and confirming unto the United States of America all or any of said lands situated in the State of Washington, free or clear from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of

said defendants, or any or either of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed of conveyance, said decree shall operate or shall have the same force or effect as such deed of conveyance.

28.—The Court erred in holding that the above mentioned defendant, Union Trust Company, had no lien on said lands or any part thereof, and in holding that the lien of said defendant evidenced by deed of trust of date July 1, 1887, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

29.—The Court erred in holding that the above mentioned defendant, Stephen T. Gage, as trustee, or the said Southern Pacific Company, had no lien on said lands or any part thereof, and in holding that the lien of said Stephen T. Gage, as trustee, evidenced by deed of trust of date June 2, 1881, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

30.—The Court erred in holding that said Union Trust Company of New York, as trustee for the owners and holders of bonds issued under and by virtue of trust mortgage of July 1, 1887, was not entitled to the rights, or to all or any of the rights of an innocent purchaser for value.

31.—The Court erred in holding that whatever interpretation might be given to the proviso touching actual settlers of said act of April 10, 1869, or whether the same created a condition subsequent or not, said Union Trust Company of New York was not not entitled to a lien upon the right of way and the whole land grant of the said act of July 25, 1866, as security for the sum of twenty million dollars, as provided in its mortgage of July 1, 1887, and in holding that said Union Trust Company was not entitled to have said lien impressed upon said right of way and said entire land grant to be satisfied first and before forfeiture or reversion to the complainant, or said United States of America, if forfeiture or reversion should be decree.

32.—The Court erred in holding that the right to forfeiture for breach of condition subsequent is not a right that may be waived, and in holding that in this case, as to said Union Trust Company, said right, if it ever existed, was not waived by said complainant and said United States of America, and in holding that said complainant and said United States of America is not estopped to allege a breach of such condition or to pray or have forfeiture as against said defendant, said Union Trust Company of New York.

33.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of July 25, 1866, mentioned in the bill of complaint and entitled "An Act granting lands to aid in the construction of a railroad

and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," or any amendment thereof, is expressed by the proviso as to sale to actual settlers, contained in the act of Congress of April 10, 1869, referred to in said bill, and entitled, "An act to amend an act entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon.' "

34.—The Court erred in holding that the paramount and primary purpose in making the said land grant was other than to aid in the construction of a railroad, as expressed in the said act of July 25, 1866.

35.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of May 4, 1870, mentioned in the bill of complaint, and entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," was other than to aid in the construction of a railroad as expressed in said last mentioned act.

36.—The Court erred in holding that this defendant, or said Southern Pacific Company or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had at any time violated any provision of said act of July 25, 1866, or of said act of April 10, 1869, or of

said act of May 4, 1870, or more particularly any clause or provision either in said act of April 10, 1869, or in said act of May 4, 1870, relative to actual settlers.

37.—The Court erred in holding that in respect to the said land grants, or either of them, there had been any application thereof by the grantees of the same, or either of them, or their successors in interest, or by this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, other than in fulfillment of and compliance with the paramount and primary purpose of Congress in making the said land grants, or either of them.

38.—The Court erred in holding that the application of the land grant under the said act of July 25, 1866, denominated by way of distinction the East Side Grant, to the construction of the railroad contemplated therein, by way of a mortgage or deed of trust of said land grant to raise funds, or refund the same, for the construction of such railroad, was a violation of any congressional intent or legislation in the premises or other than a fulfillment of and compliance with the intent and legislation of Congress.

39.—The Court erred in holding that the application of the said East Side Grant to the construction of the railroad contemplated in said act of July 25, 1866, by way of a deed of trust or mortgage of said land grant to raise funds, or to refund the same, for the construction of such railroad, was in subjection and subordination to,

and restricted by, the proviso in said act of April 10, 1869, relative to actual settlers.

40.—The Court erred in holding that any sale or sales of lands forming part of said East Side Grant, pursuant to the mortgage or mortgages, deed, or deeds of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness, so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with, the policy, intent and legislation of Congress.

41.—The Court erred in holding that the lands of said East Side Grant, or any part thereof, had been sold in breach or violation of any provision of the said act of July 25, 1866, or of said act of April 10, 1869.

42.—The Court erred in holding that the grantee of said East Side Grant, or its successors in interest, or this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same, or any part thereof, in breach of any act of Congress or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress in the premises. *

43.—The Court erred in holding that the application of the land grant under the said act of May 4, 1870, denominated, by way of distinction, the West Side Grant, to the construction of the railroad therein contemplated, by way of a mortgage or deed of trust of said grant to raise funds, or to refund the same, for the construction of such railroad was in breach of any provision of said last mentioned act, or in violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

44.—The Court erred in holding that the application of the said West Side Grant to the construction of the railroad contemplated in said act of May 4, 1870, by way of a mortgage or deed of trust of said grant to raise funds, or refund the same for the construction of such railroad, was in subjection and subordination to and restricted by anything in said last mentioned act as to actual settlers.

45.—The Court erred in holding that any sale or sales of lands forming part of said West Side Grant, under any mortgage or deed of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with the policy, intent and legislation of Congress.

46.—The Court erred in holding that the lands of said West Side Grant, or any part thereof, had been sold in breach of any provision of the said act of May 4, 1870.

47.—The Court erred in holding that the grantee of said West Side Grant, or its successors in interest, or this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused, or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same or any part thereof, in breach of said act of May 4, 1870, or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress, in the premises.

48.—The Court erred in not holding that:

The proviso in the Act of Congress of April 10, 1869, to-wit, "That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and for a price not exceeding two dollars and fifty cents (\$2.50) per acre", is void for uncertainty.

49.—The Court erred in not holding that the said proviso is a purely directive, regulative covenant.

50.—The Court erred in not holding that the said proviso is unenforceable by the United States, because its interest is purely nominal.

51.—The Court erred in not holding that the said granted lands, East Side and West Side, both or either, are timbered in character and were and are not capable of actual settlement.

52.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been done away with by the act of Congress of June 25, 1868, mentioned in the bill of complaint, and entitled, "An act to amend an act, entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon.' "

53.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been waived by said act of June 25, 1868.

54.—The Court erred in holding that said provision as to the filing of assent had not been repealed by said act of June 25, 1868.

55.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868.

56.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the designation of the Oregon Central (East Side) Railroad Company, by the legislature of Oregon, on October 20, 1868.

57.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the construction work, previous thereto, of the Oregon Central (East Side) Railroad Company, and with the subsequent designation of said last named company by the legislature of Oregon, on October 20, 1868.

58.—The Court erred in holding that said provision as to the filing of assent attached itself to any right, title or interest of the grantee of said East Side grant, or its successors in interest, or this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, by or through any estoppel, consent, legislative obligation, covenant, condition or otherwise, because of the action of said East Side Company in filing written assent on June 30, 1869, or at any other time, or in taking any step or steps to bring the attention of Congress to the matter of such assent, or to procure any action by Congress in that behalf, if any such step or steps were taken, or in applying to Congress, if such application there was, for leave to file such assent, or otherwise, or at all.

59.—The Court erred in holding that said provision as to the filing of assent, in respect to said East Side grant, was a condition, either precedent or subsequent.

60.—The Court erred in holding that the proviso in respect to settlers in said act of April 10, 1869, was a

question in the case requiring judicial determination.

61.—The Court erred in holding that any imposition by Congress under said proviso of any qualification, restriction, limitation, or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity.

62.—The Court erred in holding that any imposition by Congress under said proviso, of any qualification, restriction, limitation or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity, regard being had to the rights of the California and Oregon Railroad Company, a California corporation, under said act of July 25, 1866, and to the vested interests, accruing under said act to said last named corporation in virtue of its acceptance of said act, and its conduct, construction and expenditures thereunder and pursuant thereto.

63.—The Court erred in not holding that the Act of Congress of July 25, 1866, pleaded in the bill of complaint in this cause, was and is a single grant, of the lands described therein, to the California and Oregon Railroad Company organized under the laws of California and to such company organized under the laws of Oregon as the legislature of the latter state should thereafter designate, for the purpose of aiding the said companies in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon.

64.—The Court erred in not holding that the said grant under said Act of Congress was entire and not severable, and upon the filing of assent to said Act in the Department of Interior by either of said companies within one year after the passage thereof and the completion of the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, the said Act became operative and vested in the company complying therewith an interest in the entire grant.

65.—The Court erred in not holding that the California and Oregon Railroad Company filed its assent to said Act in the Department of the Interior within one year after the passage thereof and completed the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, and that thereupon said act became operative and vested in said California and Oregon Railroad Company an interest in the entire grant.

66.—The Court erred in not holding that when the California and Oregon Railroad Company filed its assent to said Act of Congress of July 25, 1866, in the Department of the Interior within one year, and completed the first section of twenty miles of said railroad and telegraph line, within two years after the passage of the said act, Congress was without lawful authority to annex a new condition, by amendment or otherwise, to the land grant.

67.—The Court erred in not holding that had the

legislature of Oregon failed to designate a company to construct said railroad and telegraph line in Oregon, the California and Oregon Railroad Company, upon compliance with the provisions of said act of July 25, 1866, had the right and it was authorized by said act to construct the entire railroad and telegraph line from the Central Pacific in California to Portland in Oregon and thereby earn, and become entitled to, the entire land grant under said act.

68.—The Court erred in not holding that the said Act of Congress of July 25, 1866, authorized the California and Oregon Railroad Company to construct any part or all of the said railroad and telegraph line provided the legislature of Oregon failed to designate a company as provided by said act, or such company failed to file its assent to said act.

69.—The Court erred in not holding that the said act of Congress of July 25, 1866, was, as to said California and Oregon Railroad Company, a grant in presenti, of the odd-sections of lands within the limits therein specified, along the line of said railroad from the Central Pacific Railroad in California to Portland in Oregon.

70.—The Court erred in not holding that at the time of the passage of the act of Congress of April 10, 1869, pleaded in the bill of Complaint herein, the California and Oregon Railroad Company had fully complied with all of the terms of said act of July 25, 1866, as amended

by the act of June 25, 1868, which were required to be performed up to the time of the passage of said act of April 10, 1869.

71.—The Court erred in not holding that prior to the passage of said act of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had acquired a vested interest in the whole of the lands granted by said act of July 25, 1866, and the said act of April 10, 1869, annexing a condition to the entire grant was void.

72.—The Court erred in not holding that the said grant under the said act of Congress of July 25, 1866, being single and entire and said act of April 10, 1869, being void as to the California and Oregon Railroad Company, as to the whole of said grant, it is void as to the portion of said grant situated in the State of Oregon.

73.—The Court erred in not holding that the said act of Congress of April 10, 1869, was void in that it requires that the interest acquired by the California and Oregon Railroad Company in the lands granted by said act of July 25, 1866, shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and at a price not exceeding two dollars and fifty cents (\$2.50) per acre, as a condition of an extension of time to the company designated by the legislature of Oregon, to file its assent to said act of July 25, 1866.

74.—The Court erred in not holding that the said

act of Congress of July 25, 1866, did not require that both of the companies mentioned therein should file assent to said act or construct said railroad and telegraph line, but said act was satisfied and became operative if either of the said companies filed its assent in the Department of the Interior within one year, after the passage of said act, and completed construction of its said railroad and telegraph line within the time provided in said act and the act of June 25, 1868, amendatory thereof.

75.—The Court erred in not holding that after performance by the said California and Oregon Railroad Company, of all conditions imposed by the act of July 25, 1866, and the same as amended by the act of June 25, 1868, required to be performed prior to April 10, 1869, it acquired and possessed a vested right in the whole of said land grant and Congress was thereby deprived of the power and was without authority to “add to, alter, amend or repeal” the said act of July 25, 1866, in any way that would tend to embarrass, delay or defeat the construction of either or any portion of said railroad and telegraph line, or in any way that would tend to interfere with any vested rights in said grant.

76.—The Court erred in holding that the said proviso in respect to settlers in said act of April 10, 1869, was a condition precedent.

77.—The Court erred in holding that the said proviso in said act of April 10, 1869, was a condition subsequent.

78.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of said proviso.

79.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition precedent.

80.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition subsequent.

81.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of any provision in said act of May 4, 1870, touching sales to actual settlers.

82.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect either to said East Side grant, or to said West Side Grant, or any part thereof.

83.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect to either of said grants, in any re-entry for breach of condition, or legislative equivalent thereof, or in any legislative declaration of forfeiture.

84.—The Court erred in holding that there was jurisdiction in the Court on the equity side of the cause or subject matter of this suit, and in not dismissing the bill of complaint.

85.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture of said East Side Grant for the breach of an assumed condition subsequent, if such breach there was, in said proviso of said act of April 10, 1869.

86.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

87.—The Court erred in holding that the complainant was entitled to a decree quieting its title to either of said grants against this defendant, said Southern Pacific Company, said Stephen T. Gage, individually or as trustee, and said Union Trust Company, individually or as trustee, or any or either of them, or any party to the cause.

88.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company, or its grantees, if such there were, did not have the legal title to such grants.

89.—The Court erred in holding that as foundation for a suit to quiet title to either of said grants, or any part thereof, the complainant was in possession of the

said grants, or either of them, or any part thereof; and in holding that the Oregon and California Railroad Company, or its grantees, if such there were, did not have the possession of the same.

90.—The Court erred in holding, as foundation for a suit by complainant to quiet title to the said grants, or either of them, or any part thereof, that the same had not been reduced to possession, and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

91.—The Court erred in holding that at the time of the filing of the bill of complaint herein and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company, or its grantees, if such there were, did not have possession of the said grants, or either of them.

92.—The Court erred in not holding that at the time of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company had legal title and the possession of all the lands of which forfeiture is sought by said bill of complaint against this defendant and said Southern Pacific Company, and Stephen T. Gage, individually and as trustee, and against said Union Trust Company, individually and as trustee.

93.—The Court erred in holding that the said proviso

of said act of April 10, 1869, or any provision of said act of May 4, 1870, touching actual settlers in anywise or at all affected the title to the lands or any part thereof, either of said East Side or of said West Side Grant.

94.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

95.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

96.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side Grant, that any breach of such assumed condition subsequent or any assumed cause of forfeiture, had not been acquiesced in by Congress and complainant.

97.—The Court erred in holding, on the assumption of a condition subsequent in any provision of said act of May 4, 1870, touching actual settlers, or on the as-

sumption of any cause of forfeiture in respect to said West Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been acquiesced in by Congress and complainant.

98.—The Court erred in holding on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to the said East Side Grant, that as to any breach of such assumed condition subsequent, or assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

99.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that as to any breach of such assumed condition subsequent, or any assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

100.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acquiescence in the many deeds of conveyance made by the defendant, Oregon and California Railroad Company, with the knowledge of Congress and complainant.

101.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acceptance and use of the said railroad.

102.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by annual issuance of patents to said lands from 1871 down to 1906.

103.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by the passage by Congress of the Forfeiture Acts of January 31, 1885, and September 29, 1890.

104.—The Court erred in not holding that this suit as to all lands patented prior to October, 1902, was and is barred by the Acts of Congress of March 3, 1891, and March 2, 1896.

105.—The Court erred in not holding that all causes of action presented by the bill of complaint herein are barred by laches and the Statutes of Limitations.

106.—The Court erred in holding that the primary and controlling purpose of Congress in the Act of July 25, 1866, and acts amendatory thereof, was to provide for the sale of the granted land to actual settlers, or in that behalf, that said lands were capable of actual settlement.

107.—The Court erred in not holding that the primary object of the act of April 10, 1869, was to extend the time for the construction of the said railroad and not to impose a condition or trust upon the grant already made.

108.—The Court erred in not holding that the proviso for the sale of the lands granted to actual settlers, contained in the act of April 10, 1869, and the provision as to settlers in the Act of May 4, 1870, are, and each of them is, void because the same is repugnant to the grant and tends to defeat and destroy the primary purpose and intent of Congress in making the said grants in aid of the construction of the said railroads and telegraph lines.

109.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said lands to actual settlers, was intended only to apply to such actual settlers as were, at the dates of the acts of July 25, 1866 and May 4, 1870, in actual possession of said portions of said granted lands or who might become actual settlers before the filing of the map of survey.

110.—The Court erred in not holding, on the assumption that the said provisions in the said acts of April 10, 1869 and May 4, 1870, for the sale of said granted lands to actual settlers, were conditions subsequent, that Congress and complainants waived any breach of said provisions or right to forfeiture by:

(a) Permitting the said grants to be administered by the grantees and their successors for a period of over thirty-eight years prior to the passage of the joint resolution of April 3, 1908, and prior to the commencement of this suit on the 4th day of September, 1908, with the knowledge of Congress and complainant; and

(b) The passage of the act of June 25, 1868; and

(c) The passage of the forfeiture act of January 31, 1885; and

(d) The repeated refusal of Congress to pass any other forfeiture act than the general statute on that subject; and the forfeiture act of September 29, 1890; and

(e) The continuous and regular issuance by complainant of patents to said granted lands.

111.—The Court erred in not holding, on the assumption that the act of July 25, 1866, constituted and was a single grant, and so as to the West Side Grant, both or either, that a waiver on the part of Congress and the complainant of any breach of the proviso or clause as to sales to settlers in said grants, or either of them, and

of forfeiture on account thereof, as to a portion of the same, with knowledge on the part of Congress and the complainant, was a waiver as to the entire grants, both or either.

112.—The Court erred in not holding, on the assumption that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to sales of said granted lands to actual settlers, are conditions subsequent, that each of said conditions subsequent is void for the following reasons:

(a) It is retroactive and its effect would be to divest the title of defendant, Oregon and California Railroad Company; and

(b) It is in restraint of and prohibits alienation except as to a particular class of persons; and

(c) The restraint on alienation is inconsistent with the purpose of the grant and the estate granted; and

(d) The said condition does not fix a definite time within which any of the lands shall be sold to actual settlers; and

(e) The said condition does not define who is an actual settler; and

(f) The sale of said lands is wholly dependent upon there being actual settlers thereon, an uncertain event, and the restraint contained in said provisions amounts to a perpetuity; and

(g) Because said conditions do not contain any

clause of re-entry or forfeiture for a violation thereof.

113.—The Court erred in not holding that the complainant by its conduct in relation to the lands granted by said acts of Congress has waived, and is estopped from claiming, a forfeiture thereof.

114.—The Court erred in not holding that the grantees under said acts of Congress or their successors, associates or assigns, had the right to mortgage the whole or any part of said land grant to obtain money wherewith to construct the said railroad and telegraph line.

115.—The Court erred in not holding that under the terms and provisions of the said act of Congress of April 10, 1869, and of May 4, 1870, the grantee or grantees mentioned in said land grants cannot and could not perform the said provisions as to the sale of the lands granted to actual settlers, and by reason thereof, performance of said provisions was excused and the said granted lands vested in said grantees absolutely and discharged of said conditions.

116.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to the sale of the lands granted by said acts to actual settlers was and is unilateral and void in that actual settlers are not bound to purchase and the grantees under said grants could not compel settlers to purchase any portion or portions thereof.

117.—The Court erred in not holding that the

grantee or grantees under said land grants in any event were required to sell to actual settlers only during the construction of the said railroad.

118.—The Court erred in not holding that during the period of construction of said railroad there were no actual settlers on any portion of said land grants, and for that reason a sale thereof could not be made to actual settlers in any quantity, and by reason thereof the said grantee or grantees under said land grants took the same, discharged of any provision for the sale thereof to actual settlers.

119.—The Court erred in not holding that during the construction of said railroad it was impossible for the said grantee or grantees under said land grants to sell any portion of said grants to actual settlers, and that by reason thereof such sale was excused and the title to said granted land in Oregon and the whole thereof vested in the said defendant, Oregon and California Railroad Company.

120.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, if and when operative, was directive to the Oregon and California Railroad Company to sell to actual settlers only, land in quantities not greater than one quarter section to one purchaser, and for a price not exceeding Two Dollars and fifty cents (\$2.50) per acre, and did not prohibit the sale of said granted lands to persons other than actual set-

tlers in any quantity and at any price.

121.—The Court erred in not holding that the purpose of the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said granted lands to actual settlers in quantities not exceeding one quarter section to each purchaser and at a price not exceeding Two Dollars and fifty cents (\$2.50) per acre, was to give to actual settlers an option to purchase lands in said grants on said terms and not intended to prohibit the said Oregon and California Railroad Company from selling the lands in said grants to others than actual settlers in any quantity and at any price.

122.—The Court erred in not holding that Congress, in passing the act of April 10, 1869, and the act of May 4, 1870, contemplated two classes of persons to whom said granted lands would be sold in aid of the construction of said railroad, namely, actual settlers in possession of some portion of said grant, and persons who are not actual settlers and who are not in possession of any portion of said grant.

123.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, are, and each of them is, in restraint of alienation and void in that:

(a) It limits the time during which the property can be held by the grantee.

(b) It provides for the alienation to a limited class of persons.

(c) It limits the amount of land which may be sold to any one person.

(d) It limits the price at which it can be sold.

124.—The Court erred in holding that the said land grants did not become operative until the Railroad Company filed its assent to the terms and conditions of Section Six of the act of July 25, 1866, as amended April 10, 1869.

125.—The Court erred in holding that issuance of patents to said lands by the land department was not a waiver on the part of the complainant of the right to insist upon the performance by the Railroad Company of the provisions in said grants as to the sale of lands to actual settlers.

126.—The Court erred in holding that the act of Congress of April 10, 1869, was a renewal or revival of the grant under the act of Congress of July 25, 1866, or that the said act of April 10, 1869, was other than a waiver of the right of forfeiture on account of any of the conditions in said grant.

127.—The Court erred in holding that at the time of the passage of the said act of Congress of April 10, 1869, the said land grant under the act of Congress of July 25, 1866, had lapsed.

128.—The Court erred in not holding that this suit cannot be maintained as one to enforce forfeiture nor to quiet title, because—

(a) Neither the United States nor Congress had declared a forfeiture; and

(b) The fact of forfeiture has not been adjudicated by a court of law; and

(c) The defendant, Railroad Company, holds the legal title to and the possession of said granted lands.

129.—The Court erred in not holding that the said defendant, Oregon and California Railroad Company, was entitled to a trial by jury of the issue as to whether or not any of the conditions of said grants, or either of them, had been breached.

130.—The Court erred in not holding that the complainant and Congress had knowledge of all the alleged breaches of the provisions in each of said land grants for the sale of the granted lands to actual settlers; and that the complainant and Congress acquiesced in said breaches, with the knowledge thereof, and complainant is estopped to claim a forfeiture of said land grant or any part thereof.

131.—The Court erred in not holding that during the year 1879, down to and including the year 1903, reports were regularly and semi-annually made of the transactions of the land department of said defendant

Oregon and California Railroad Company to the Auditor of Railroad Accounts created by the Act of Congress of June 19, 1878, showing the total cash receipts from all sales of the said granted lands to the date of said report; the average price per acre for all sales to the date of said report, and the average price per acre for all sales during the half year; the average price per acre for all purchases to the date of said report; the maximum price per acre from sales (not town lots); the minimum price per acre from sales (not town lots); the maximum price per acre asked at the time of making such report; the minimum price per acre asked at the time of making such report; and that the Auditor of Railroad Accounts, pursuant to the provisions of the said Act of Congress of June 19, 1878, made like annual reports during the whole of said period to the Secretary of the Interior, and that annually during the whole of said period the Secretary of the Interior transmitted the said reports to Congress, and that said reports showed that during the year 1879, down to and including the year 1903, the said defendant Oregon and California Railroad Company sold some of said granted lands at a price in excess of Two Dollars and Fifty Cents (\$2.50) per acre; also in quantities exceeding one hundred and sixty (160) acres; and that Congress and complainant, with the knowledge of the said matters and things contained in said reports, acquiesced therein and permitted the said defendant railroad company to take action accordingly and to alter its position and to continue to so administer said grant,

and that complainant was, and is, therefore, estopped from claiming a breach of any of the conditions, if such there be, in said grant, or a forfeiture on account thereof, and has waived said alleged breaches and acquiesced therein.

132.—The Court erred in not holding that the complainant was estopped by the acts of the Secretary of the Interior in approving, as bases of lieu land selections, deeds conveying property sold in alleged violation of the said provisions in said grants as to the sale of said granted lands to actual settlers only.

133.—The Court erred in holding that the “East Side Company,” so-called, by accepting the grant under the Act of Congress of July 25, 1866, as amended by the Act of April 10, 1869, was estopped from denying the right or power of Congress to pass an Act imposing any conditions repugnant to the original grant.

134.—The Court erred in not holding that the Act of Congress of July 25, 1866, granting the lands therein described to aid in the construction of a railroad and telegraph line, without any direction as to the manner of sale or disposition thereof, to aid in such construction, said railroad company had the right to sell or mortgage the whole of said granted lands for such purpose.

135.—The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to

the decree rendered herein.

136.—The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered herein.

137.—The Court erred in not holding that the evidence in the above-entitled cause was wholly insufficient to sustain and support the decree rendered in said cause, in that there is no evidence in the record showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of said granted lands to actual settlers, only, in quantities not exceeding one hundred and sixty acres to one purchaser and at a price not exceeding Two Dollars and Fifty cents (\$2.50) per acre.

138.—The Court erred in not holding that the evidence in said cause was insufficient to support the decree rendered herein or any decree in favor of complainant in that there is no evidence in this cause showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of the said granted lands to actual settlers.

139.—The Court erred in not holding that the evidence in this cause was wholly insufficient to sustain the decree rendered herein or any decree in favor of complainant, in that there was no evidence on which to base a decree of forfeiture of the lands or estates in

lands described in the bill of complaint herein, for any alleged breach of any condition in either of said acts of Congress.

140.—The Court erred in rendering the judgment and decree herein against the said defendant, Oregon and California Railroad Company, forfeiting the lands and estates in lands described in the said decree, or any of said lands, in that there is no evidence whatever in the record in this cause showing that the said defendant violated or breached any condition in either of the said acts of Congress of July 25, 1866, June 25, 1868 or April 10, 1869, or May 4, 1870.

141.—The Court erred in holding that the patents issued in respect to the said land grants, or either of them, or any part thereof, were not conclusive against complainant as to any breach of assumed condition subsequent, or any forfeiture resulting therefrom, or from any cause whatever.

142.—The Court erred in holding that the title to so much of either of said grants as had been patented was not concluded against complainant herein by the acts of Congress of March 3, 1891 and March 2, 1896.

143.—The Court erred in holding that the title to so much of either of said grants as had been patented prior to October 1902, was not concluded against complainant herein and that the alleged cause of action had not been barred, and the title to such patented lands made absolute.

144.—The Court erred in holding that the grant of lands under the act of July 25, 1866, had lapsed at the time of the passage of the act of Congress of April 10, 1869; and at the same time holding that the proviso in said act of April 10, 1869, for the sale of said granted lands to actual settlers, is a condition subsequent, and in not holding in such behalf that a condition subsequent must attach to a title or grant previously existing, or to a title or grant created at the same time the condition subsequent is imposed.

145.—The Court erred in not holding that a condition subsequent which may defeat a grant, if breached, must be imposed in the same act creating the grant, or if imposed in a subsequent act, then the act creating the grant must reserve the right to impose or annex such condition.

146.—The Court erred in not holding that the act of Congress of April 10, 1869, was not a new grant or a revival of the old grant, but a waiver of a right to forfeiture of the grant already made under the act of July 25, 1866.

147.—The Court erred in not holding, assuming the said "actual settler clause" in each of said acts of Congress to be a condition subsequent, and certain, and definite, so as to be enforceable that it was repugnant to the grant and is void.

148.—The Court erred in not holding that if actual

settlers did not apply to purchase the granted land and if they were not sold by or before the time following completion and acceptance of the road, then, and thereafter the said "actual settler" clause in each of said acts became inoperative and whether the words of the "actual settler" clause created a covenant or condition, the railroad company took an estate in the unsold lands absolute and unconditional.

149.—The Court erred in not holding that it is the duty of the land department of the United States to administer the land laws thereof and to determine in the first instance who are "actual settlers"; and that the proviso in the act of April 10, 1869, and the provisions in the act of May 4, 1870, in that regard, are and each of them is void, and that it was beyond the power of Congress to impose upon the Railroad Company a function belonging exclusively to the land department of the United States.

150.—The Court erred in not holding that the said provisions in the act of April 10, 1869, and the provisions in the act of May 4, 1870, as to the sale of such lands to actual settlers are and each of them is void, in that no method or procedure is provided in either of said acts whereby it can be determined who are actual settlers within the meaning of either of said provisions; and the question as to who are actual settlers upon such granted lands is a question committed by the laws of the United States to the land department thereof.

WHEREFORE, this defendant, Oregon and California Railroad Company, prays that the said decree herein—except so much thereof as—(1) dismisses the cross-complaints of the defendants—cross-complainants and the complaints in intervention of the interveners-defendants, and, (2) adjudges that the complainant's prayer for an accounting be denied, and, (3) excepts from the operation of the decree, all right of way and station grounds, as established and in actual use at the date of said decree in the operation of this defendant's railroad, and, (4) provides that the said decree shall not apply to reservations or exceptions, in contracts or deeds of conveyance, executed by or on behalf of this defendant in the sale of any lands granted by the aforesaid act of July 25, 1866, as amended, or by said act of May 4, 1870, of right of way for the main track of the railroad of this defendant, as actually constructed, established, and in operation at the date of said decree—be reversed, and that this Court enter a decree in accordance with the prayer of the answer and amendments thereto of this defendant, and the defendant, Southern Pacific Company, and Stephen T. Gage, individually and as trustee filed herein, and adjudging that the bill of complaint herein be dismissed, and for such other relief to this defendant, said Southern Pacific Company, said Stephen T. Gage, individually and as trustee, and said Union Trust Company, individually and as trustee, as may be proper.

PETER F. DUNN,
WM. D. FENTON,
and JAMES E. FENTON,

WM. F. HERRIN,
Of Counsel.

Solicitors and Attorneys for said Defendant,
Oregon and California Railroad Company.

Service of the foregoing assignment of errors admitted this 29th day of Aug. 1913.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prah, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschild, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &
BURKHEIMER,

Successors to

SHEPARD & FLETT;
JOHN E. BURKHEIMER,
CHARLES E. SHEPARD,
C. I. LEAVENGOOD,
JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,
LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervenor Luther E. Trowbridge.

A. C. WOODCOCK,
GEO. W. WRIGHT,

Solicitors and Attorneys for the said intervenors George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said intervenors Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida
A. White, Grant Nixon, Adolphus Gaunt,
and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thomson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

DISTRICT OF OREGON)
County of) ss.

Due service of the within Assignment of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of August 1913, by receiving a copy thereof, duly certified to by,

J. C. McREYNOLDS, Atty. Genl., and

B. D. TOWNSEND, Spl. Asst. to Atty Genl.

By GLENN E. HUSTED,

Spl. Asst. to Attorney General,

Attorney for Complainant.

CLARENCE L. REAMES, United States Attorney.

By ROBERT R. RANKIN,

Asst. United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. CANNON,
Clerk United States District Court.

Haggett
et al
Intervenors
359

And on August 29, 1913, there was duly filed in court Assignments of Errors of John H. Haggett others, defendants and cross-complainants, and William F. Slaughter and others, interveners, in words figures as follows, to-wit:

(TITLE)

And they do and each of them does complain of errors in the proceedings in the above entitled cause, the District Court of the United States for the District of Oregon and in the decision, judgment and decree made and rendered therein, and entered therein on the 10th day of July, 1913, at the March, 1913 term of said court, which said judgment and decree and the substance thereof is set forth and described in the joint several petition for appeal of the defendants, defendants-cross-complainants and interveners herein herewith filed, and to which proceedings, decision, judgment and decree these assignments of error pertain and relate,

And these interveners and cross-complainants do say and each of them says that said proceedings were unfair, and said decision, judgment and decree was made against the just rights of these interveners and each of them and against the just rights of these complainants and each of them,

And there being many parties hereto and many others similarly situated, for the purpose of simplifying

And on August 29, 1913, there was duly filed in said court Assignments of Errors of John H. Haggett and others, defendants and cross-complainants, and William F. Slaughter and others, interveners, in words and figures as follows, to-wit:

(TITLE)

And they do and each of them does complain of errors in the proceedings in the above entitled cause, in the District Court of the United States for the District of Oregon and in the decision, judgment and decree made and rendered therein, and entered therein on the first day of July, 1913, at the March, 1913 term of said court, which said judgment and decree and the substance thereof is set forth and described in the joint and several petition for appeal of the defendants, defendants-cross-complainants and interveners herein herewith filed, and to which proceedings, decision, judgment and decree these assignments of error pertain and relate,

And these interveners and cross-complainants do say and each of them says that said proceedings were and are, and said decision, judgment and decree was and is against the just rights of these interveners and each of them and against the just rights of these complainants and each of them,

And there being many parties hereto and many others similarly situated, for the purpose of simplifying

the record and preventing a great multiplicity of and duplication of the assignments of error herein, these assignments of error are made by all and each of the parties hereto on their own behalf and on behalf of each of them, with the intent that each assignment shall be considered and taken as the assignment of each person and of all persons on behalf of whom it may apply and be pertinent,

And in that behalf and for that purpose these interveners and these cross-complainants do and each of them does, jointly and severally assign the following as errors complained of and intended to be urged by them and each of them upon said appeal, that is to say:

1

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the cross-complaint of the defendant, John H. Haggett and the other defendants with him in his said bill joined, for want of equity in said bill, and

2

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the cross-complaint of said defendants, for want of equity in said bill, and

3

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the cross-complaint of said defendants, for want of equity in said bill, and

4

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the cross-complaint of said defendants, for want of equity in said bill, and

5

The Court erred in sustaining the motion of the complainant for an order striking the cross-complaint of said defendants, and in granting and entering the order striking said bill, for want of equity in said bill, and

6

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said cross-complaint, and

7

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said cross-complaint, and

8

The Court erred in not requiring the complainant to answer said cross-complaint, and

9

The Court erred in not granting to said defendants and each of them, the relief prayed for by them and each of them respectively, in said bill, and

10

The Court erred in not granting to said defendants or any of them, any equitable relief, as

Said cross-complaint contains allegations and matters entitling said defendants and each of them to equitable relief, and

Said cross-complaint contains allegations and matters entitling said defendants and each of them to the relief prayed for by them and each of them respectively, in said bill.

11

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, William F. Slaughter and the other interveners with him in his said bill joined, for want of equity in said bill, and

12

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

13

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

14

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

15

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

16

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Com-

pany and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

17

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

18

The Court erred in not requiring the complainant to answer said bill in intervention, and

19

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

20

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

21

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Edward D. Townsend, and the other interveners with him in his said bill joined, for want of equity in said bill, and

22

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

23

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

24

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

25

The Court erred in sustaining the motion of the

complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

26

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

27

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

28

The Court erred in not requiring the complainant to answer said bill in intervention, and

29

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

30

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and

matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

31

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, John Burbee, and the other interveners with him in his said bill joined, for want of equity in said bill, and

32

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

33

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

34

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

35

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

36

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

37

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

38

The Court erred in not requiring the complainant to answer said bill in intervention, and

39

The Court erred in not granting to said interveners

and each of them, the relief prayed for by them and each of them, respectively in said bill, and

40

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

41

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Milo F. Dennis, and the other interveners with him in his said bill joined, for want of equity in said bill, and

42

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

43

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

44

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

45

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

46

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

47

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

48

The Court erred in not requiring the complainant to answer said bill in intervention, and

49

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

50

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

51

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Frank Terrace, and the other interveners with him in his said bill joined, for want of equity in said bill, and

52

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

53

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

54

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

55

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

56

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Com-

pany and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

57

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

58

The Court erred in not requiring the complainant to answer said bill in intervention, and

59

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

60

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

61

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Charles J. Vanzile and the other interveners with him in his said bill joined, for want of equity in said bill, and

62

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

63

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

64

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

65

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

66

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

67

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

68

The Court erred in not requiring the complainant to answer said bill in intervention, and

69

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

70

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

71

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Luther E. Trowbridge, and the other interveners with him in his said bill joined, for want of equity in said bill, and

72

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

73

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

74

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

75

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

76

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

77

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

78

The Court erred in not requiring the complainant to answer said bill in intervention, and

79

The Court erred in not granting to said interveners

and each of them, the relief prayed for by them and each of them, respectively in said bill, and

80

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

81

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Geo. W. Wright, and the other interveners with him in his said bill joined, for want of equity in said bill, and

82

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as

Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

83

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

84

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

85

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

86

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

87

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

88

The Court erred in not requiring the complainant to answer said bill in intervention, and

89

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

90

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

91

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, in-

dividually and as Trustee, to the bill of intervention of the intervener, Elmer L. Hancock, and the other interveners with him in his said bill joined, for want of equity in said bill, and

92

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

93

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

94

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

95

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

96

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

97

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

98

The Court erred in not requiring the complainant to answer said bill in intervention, and

99

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

100

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them re-

spectively in said bill.

101

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Robert Aistrop, and the other interveners with him in his said bill joined, for want of equity in said bill, and

102

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

103

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

104

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

105

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

106

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

107

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

108

The Court erred in not requiring the complainant to answer said bill in intervention, and

109

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

110

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

111

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, B. W. Nunnally, and the other interveners with him in his said bill joined, for want of equity in said bill, and

112

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

113

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

114

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

115

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

116

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

117

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

118

The Court erred in not requiring the complainant to answer said bill in intervention, and

119

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

120

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

121

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Paul C. L'Amoreaux and the other interveners with him in his said bill joined, for want of equity in said bill, and

122

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners,

for want of equity in said bill, and

123

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

124

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

125

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

126

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

127

The Court erred in not requiring the Union Trust

Company, individually and as Trustee, to answer said bill in intervention and

128

The Court erred in not requiring the complainant to answer said bill in intervention, and

129

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

130

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

131

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, John F. Fowler, and the other inter-

veners with him in his said bill joined, for want of equity in said bill, and

132

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

133

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

134

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

135

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

136

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

137

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

138

The Court erred in not requiring the complainant to answer said bill in intervention, and

139

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

140

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them

to the relief prayed for by them and each of them respectively in said bill.

141

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervenor, L. C. Keyton, and the other interveners with him in his said bill joined, for want of equity in said bill, and

142

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

143

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

144

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

145

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

146

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

147

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

148

The Court erred in not requiring the complainant to answer said bill in intervention, and

149

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

150

The Court erred in not granting to said interveners

or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

151

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, R. E. Cameron, and the other interveners with him in his said bill joined, for want of equity in said bill, and

152

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

153

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

154

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

155

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

156

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

157

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

158

The Court erred in not requiring the complainant to answer said bill in intervention, and

159

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

160

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

161

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Charles W. Varnum, and the other interveners with him in his said bill joined, for want of equity in said bill, and

162

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as

Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

163

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

164

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

165

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

166

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

167

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

168

The Court erred in not requiring the complainant to answer said bill in intervention, and

169

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

170

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

171

The Court erred in sustaining the demurrer of the

defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Nicholas Herrman, and the other interveners with him in his said bill joined, for want of equity in said bill, and

172

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

173

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

174

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

175

The Court erred in sustaining the motion of the com-

plainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

176

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

177

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

178

The Court erred in not requiring the complainant to answer said bill of intervention, and

179

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

180

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

181

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the interveners, Edwin F. Anderson, and the other interveners with him in his said bill joined, for want of equity in said bill, and

182

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

183

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

184

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

185

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

186

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

187

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

188

The Court erred in not requiring the complainant to answer said bill in intervention, and

189

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

190

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

191

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervenor, Fred J. Gould, and the other interveners with him in his said bill joined, for want of equity in said bill, and,

192

The Court erred in sustaining the demurrer of the

defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

193

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

194

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

195

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

196

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

197

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

198

The Court erred in not requiring the complainant to answer said bill in intervention, and

199

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

200

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

201

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company,

Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Abram B. Horner, and the other interveners with him in his said bill joined, for want of equity in said bill, and

202

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

203

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

204

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

205

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of

said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

206

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

207

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

208

The Court erred in not requiring the complainant to answer said bill in intervention, and

209

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

210

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to

equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

211

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, George B. Bothwell, and the other interveners with him in his said bill joined, for want of equity in said bill, and

212

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

213

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

214

The Court erred in sustaining the motion of the de-

fendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

215

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

216

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

217

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

218

The Court erred in not requiring the complainant to answer said bill in intervention, and

219

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each

of them, respectively in said bill, and

220

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

221

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Hervey L. Keyes, and the other interveners with him in his said bill joined, for want of equity in said bill, and

222

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

223

The Court erred in sustaining the motion of the de-

fendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

224

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

225

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

226

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

227

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

228

The Court erred in not requiring the complainant to answer said bill in intervention, and

229

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them respectively in said bill, and

230

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

231

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Marvin P. Alford, and the other interveners with him in his said bill joined, for want of equity in said bill, and

232

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

233

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

234

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

235

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

236

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company

and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

237

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

238

The Court erred in not requiring the complainant to answer said bill in intervention, and

239

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

240

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

241

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Albert Bozarth, and the other interveners with him in his said bill joined, for want of equity in said bill, and

242

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

243

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

244

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

245

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

246

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

247

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

248

The Court erred in not requiring the complainant to answer said bill in intervention, and

249

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them respectively in said bill, and

250

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

251

The Court erred in holding that these interveners and cross-complainants were not entitled to the relief prayed for by them and each of them, respectively, and

252

The Court erred in not holding that these interveners and cross-complainants were entitled to the relief prayed for by them and each of them, respectively, and

253

The Court erred in holding that none of these interveners and cross-complainants were entitled to the relief prayed for by them, and

254

The Court erred in holding that none of these interveners and cross-complainants were entitled to any relief;

As, their said bills of intervention and cross-complaint and each of them, contain allegations and mat-

ters entitling these interveners and cross-complainants and each of them, to equitable relief; and

Said bills of intervention and cross-complaint and each of them, contain allegations and matters entitling the interveners and cross-complainants and each of them, to the relief prayed for by them and each of them, respectively, in their said bills.

255

The Court erred in holding that the United States, complainant herein, was entitled to a forfeiture of the lands or any of the lands sought to be purchased by the interveners and cross-complainants herein or any of them.

256

The Court erred in not holding that the United States, complainant herein, was not entitled to a forfeiture of the lands or any of the lands sought to be purchased by the interveners and cross-complainants herein or any of them.

257

The Court erred in holding that the lands or any thereof described in this decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any threof, to the complainant.

258

The Court erred in holding that the lands sought to

be purchased by the interveners and cross-complainants herein, should be forfeited.

259

The Court erred in holding that the lands or any thereof sought to be purchased by these interveners and cross-complainants, or any of them, described in said decree, were and had been forfeited to the United States, complainant herein, and that a decree be entered forfeiting said lands or any thereof to the complainant.

260

The Court erred in holding that the proviso in the said act of April 10, 1869, was a condition subsequent.

261

The Court erred in holding that the proviso in the amendment of April 10, 1869, requiring the sale of lands to actual settlers only, in quantities not exceeding one-quarter section to any one purchaser and at a price not to exceed \$2.50 per acre was or is a condition subsequent, the breach of which entitled the United States, complainant herein, to a forfeiture of the lands covered by said land grant.

262

The Court erred in not holding that the proviso in the amendment of April 10, 1869, requiring the sale of lands to actual settlers only, in quantities not exceeding

one-quarter section to any one purchaser and at a price not to exceed \$2.50 per acre, was not and is not a condition subsequent, the breach of which would entitle the United States, complainant, to a forfeiture of the lands covered by said grant.

263

The Court erred in holding that the provision in the act of May 4, 1870, requiring the sale of lands to actual settlers only, in quantities not exceeding one-quarter section to any one purchaser and at a price not to exceed \$2.50 per acre, was or is a condition subsequent, the breach of which entitled the United States, complainant herein, to a forfeiture of the lands covered by said land grant.

264

The Court erred in not holding that the provision in the act of May 4, 1870, requiring the sale of lands to actual settlers only, in quantities not exceeding one-quarter section to any one purchaser and at a price not to exceed \$2.50 per acre, was not nor is not a condition subsequent, the breach of which would entitle the United States, complainant, to a forfeiture of the lands covered by said land grant.

265

The Court erred in holding that the consequence and penalty and forfeiture was attached by Congress to a breach, should such there be, of the proviso of April 10, 1869.

266

The Court erred in holding that the consequence and penalty of forfeiture was intended by Congress to be attached to a breach, should such there be, of the covenant or proviso in the act of April 10, 1869, requiring sales of land to settlers.

267

The Court erred in holding that the provision in the West Side grant, requiring sales to settlers, was a condition subsequent, and

268

The Court erred in not holding that the provision in the West Side grant, requiring sales to settlers, was not a condition subsequent, as

(a) Said provision is not coupled with and does not contain any appropriate words importing a condition subsequent, and

(b) Said provision does not contain any language importing a right to forfeiture or re-entry for condition broken.

269

The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of any provision of said act of May 4, 1870, touching sales to actual settlers.

270

The Court erred in holding that the consequence and penalty of forfeiture was intended by Congress to be attached to a breach, should such there be, of the covenant or provision in the act of May 4, 1870, requiring sales to settlers.

271

The Court erred in holding that there was jurisdiction in the Court on the equity side to enforce a forfeiture of said East Side grant for the breach of an assumed condition subsequent if such there was, in said proviso of said act of April 10, 1869.

272

The Court erred in holding that there was jurisdiction in the Court on the equity side to decree a forfeiture of the title of the defendants to the lands embraced in and covered by the East Side grant, for breach of an assumed condition subsequent in the proviso contained in the act of April 10, 1869.

273

The Court erred in assuming jurisdiction on the equity side to enforce a forfeiture of the East Side grant for breach of an assumed condition subsequent in the proviso in the act of April 10, 1869, as

(a) The effect of such assumption was to divest the interests of the interveners and cross-complainants

which had become vested, in parts of said East Side grant, under the terms of said proviso, and

(b) No declaration of forfeiture had ever been made by Congress prior to the vesting of such interest, and

(c) No declaration of forfeiture had been made by Congress prior to the entry of said decree, and

(d) No declaration of forfeiture had been made by Congress prior to the commencement of said suit.

274

The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

275

The Court erred in holding that there was jurisdiction in the Court on the equity side to decree a forfeiture of the title of the defendants to the lands embraced in and covered by the West Side grant, for breach of an assumed condition subsequent contained in the act of May 4, 1870.

276

The Court erred in assuming jurisdiction on the equity side to enforce a forfeiture of the West Side grant for breach of an assumed condition subsequent

contained in said grant, as

(a) The effect of such assumption was to divest the interests of the interveners and cross-complainants, which had become vested in parts of the West Side grant, under the terms of said grant, and

(b) No declaration of forfeiture had ever been made by Congress prior to the vesting of such interest, and

(c) No declaration of forfeiture had been made by Congress prior to the entry of said decree, and

(d) No declaration of forfeiture had been made by Congress prior to the commencement of said suit.

277

The Court erred in holding that by its joint resolution of April 13, 1908, the Congress of the United States forfeited or intended to forfeit, or authorized the forfeiture by the Attorney General or intended to authorize the forfeiture by the Attorney General, or authorized or intended to authorize or empower the Court to forfeit or decree a forfeiture of the lands embraced within the East Side grant, for or on account of any assumed breach of conditions of the proviso of the act of April 10, 1869.

278

The Court erred in holding that by its joint resolution of April 30, 1908, the Congress of the United States forfeited or intended to forfeit, or authorized the forfeit-

ure by the Attorney General, or intended to authorize the forfeiture by the Attorney General, or authorized or intended to authorize or empower the Court to forfeit or decree a forfeiture of the lands embraced within the West Side grant for, or on account of any assumed breach of condition contained in said grant.

279

The Court erred in holding that there was any cause of action or foundation of jurisdiction for forfeiture in respect to either of said grants, in any re-entry for breach of condition or legislation equivalent thereof, or in any legislative declaration of forfeiture.

280

The Court erred in not holding that the proviso in the amendatory act of April 10, 1869, requiring sales to settlers, was not sufficiently definite to be enforced as a condition subsequent.

As such proviso does not contain any words importing a right of forfeiture or re-entry for condition broken.

281

The Court, being a court of equity, erred in decreeing a forfeiture to the complainant of all right and interest of the defendants in or to the lands embraced within the grant of 1866, for breach of the assumed condition contained in the amendment of April 10, 1869, as

(a) Assuming that said proviso was a condition subsequent, for breach of which forfeiture could be had, such condition subsequent was and is also a covenant; and

(b) The complainant prayed in its bill of complaint for a specific performance of this covenant, and

(c) Such forfeiture was and is inequitable and should not be decreed by any court of equity where there is any other means of doing justice between the parties; and

(d) The complainant prayed for specific performance of the covenant, and the Court should have granted such prayer, as by such performance justice and equity could have been done to all of the parties to the suit without forfeiture; and

(e) The Court was without jurisdiction to and it was inequitable for it to divest defendant, Oregon and California Railroad Company of title as trustee for the benefit of the interveners and cross-complainants, *sestui que trustent*, with interests vested prior to said decree; and

(f) In divesting the railroad company of title by forfeiture, the Court, in effect, imposed a penalty upon the railroad company to the extent of its interest in the land forfeited, to-wit: in the amount of \$2.50 per acre for each acre of the land so forfeited, for and on account of the breach of its covenant, the imposing of which penalty is wholly inequitable, and

(g) By forfeiture the Court divested the vested interest of these intervenors and cross-complainants and each of them, without any fault on their part or on the part of any of them, all of which is wholly inequitable.

282

The Court, being a court of equity, erred in decreeing a forfeiture to the complainant, of all right and interest of the defendants, in or to the lands embraced within the West Side land grant, for breach of the assumed condition contained in the act of May 4, 1870, as

(a) Assuming that said provision was a condition subsequent, for breach of which forfeiture could be had, such condition subsequent was and is also a covenant; and

(b) The complainant prayed in its bill of complaint for a specific performance of this covenant, and

(c) Such forfeiture was and is inequitable and should not be decreed by any court of equity where there is any other means of doing justice between the parties; and

(d) The complainant prayed for specific performance of the covenant, and the Court should have granted such prayer, as by such performance justice and equity could have been done to all of the parties to the suit without forfeiture; and

(e) The Court was without jurisdiction to and it was inequitable for it to divest defendant, Oregon and

California Railroad Company of title as trustee for the benefit of the interveners and cross-complainants, sestui que trustent, with interests vested prior to said decree; and

(f) In divesting the railroad company of title by forfeiture, the Court, in effect, imposed a penalty upon the railroad company to the extent of its interest in the land forfeited, to-wit: in the amount of \$2.50 per acre for each acre of the land so forfeited, for and on account of the breach of its covenant, the imposing of which penalty is wholly inequitable, and

(g) By forfeiture the Court divested the vested interest of these interveners and cross-complainants and each of them, without any fault on their part or on the part of any of them, all of which is wholly inequitable.

283

The Court erred in not holding that this suit cannot be maintained by complainant as one to enforce forfeiture nor to quiet title, as

(a) Neither the United States nor Congress has declared a forfeiture; and

(b) The fact of forfeiture had not been adjudicated by a court of law; and

(c) The defendant, railroad company, holds the legal title to and the possession of said granted lands; and

(d) Complainant having asked for forfeiture and in the alternative, for specific performance, this suit cannot be maintained for forfeiture, since equitable relief may be granted by specific performance; and

(e) In view of specific performance, a decree quieting title in the Government, cannot be had.

284

The Court erred in not holding that the Government was estopped to claim forfeiture of the lands embraced within each and both of said land grants, as

(a) The Government in its bill of complaint bases its right to recover, upon the refusal of the railroad company to sell said lands to the interveners and cross-complainants and others similarly situated, and

(b) The Government in its bill of complaint prayed that these interveners and cross-complainants might be permitted to enforce their rights herein, and

(c) The Government having come into a court of equity, is estopped to claim forfeiture when equitable relief by performance can be had; and

(d) The Government is estopped to claim forfeiture in lieu of performance, since the interveners and cross-complainants have come into court upon the invitation of the Government and furnished the means whereby performance may be had.

285

The Court erred in holding that the provisions in each and both of said land grants concerning sales to settlers, are negative provisions only, designed to prevent sales to others than settlers in quantities greater than one-quarter section to any one purchaser and at prices greater than \$2.50 per acre, and not positive provisions requiring sales to settlers in quantities not greater than one-quarter section to any one purchaser and at a price not greater than \$2.50 per acre.

286

The Court erred in not holding that the provisions of each and both of said land grants concerning sales to settlers were both positive and negative, requiring the grantee to sell to settlers, who should apply to buy, not more than one-quarter section, at a price not greater than \$2.50 per acre, and requiring said grantee to refrain from selling any of the granted lands to others than settlers or in quantities greater than one-quarter section or at a price greater than \$2.50 per acre.

287

The Court erred in holding that the provisions in each and both of said land grants, requiring sales to settlers, are not positive covenants which may be specifically enforced.

288

The Court erred in holding that the provisions in each and both of said land grants requiring sales to set-

tlers, is a negative covenant only, which may be enforced by the Government only, and that the only means of such enforcement are by forfeiture for breach thereof.

289

The Court erred in decreeing a forfeiture of those lands included in either or both of the grants to the railroad company or which the interveners and cross-complainants had made application to purchase from and tendered to the railroad company the sum of \$2.50 per acre and offered to become actual settlers on the lands so applied for, prior to the adoption by Congress of the joint resolution of April 30, 1908, as

By so applying, tendering the purchase price and offering to become an actual settler upon the lands so applied for, each intervener and cross-complainant has acquired a vested interest in the land applied for, which cannot be divested by Congress, assuming that said provisions are conditions subsequent, and that the adoption of said joint resolution by Congress was a declaration of forfeiture for breach thereof.

290

The Court erred in holding that although the provisions in each and both of said land grants were designed to devote the lands conveyed by said grants, to settlement and tillage and to prevent the monopoly of the land and that such grants were laws as well as grants, that notwithstanding the railroad company might defeat the purpose of the provisions requiring sales to set-

tlers, by themselves monopolizing and holding the lands and refusing to sell them at all, and by refusing to sell any of them except to such persons and in such quantities as it saw fit within the price and terms provided in the grant.

291

The Court erred in not holding that the purpose of the joint resolution of Congress of April 30, 1908, was to authorize the enforcement of a forfeiture for any breach of an assumed condition subsequent in either of said land grants, as an alternative only, of the refusal of the railroad company to perform the covenants requiring sales to settlers, after such performance had been decreed by the Court.

292

The Court erred in not holding that the joint resolution of Congress of April 30, 1908, authorized the enforcement of forfeiture for any breach of an assumed condition subsequent in either of said land grants, only in the event that specific performance of the covenants in said grants, requiring sales to settlers, could not be enforced.

293

The Court erred in not holding that the joint resolution of Congress of April 30, 1908, authorized a forfeiture of the legal title of the railroad company for breach of an assumed condition subsequent in either of

said land grants, only as a means of carrying into effect the covenants in said grants requiring sales to settlers.

294

The Court erred in holding that at the time of the filing of the bill of complaint herein and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company, did not have possession of said grants or either of them.

295

The Court erred in not holding that at the time of filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company had legal title and the possession of all lands of which forfeiture is sought by said bill of complaint.

296

The Court erred in holding that the United States, complainant herein, is the owner in fee simple or in possession of said lands or any part thereof or entitled to said lands or entitled to the possession of the same or any part thereof, which are sought to be purchased by these interveners and cross-complainants or any of them.

297

The Court erred in holding that, as a foundation for a suit to quiet its title to either of said grants, or any

part thereof, the complainant was in possession of the said grants, or either of them, or any part thereof; and in holding that the Oregon and California Railroad Company did not have the possession of the same.

298

The Court erred in holding as a foundation for a suit by complainant, to quiet its title to the said grants or either of them, or any part thereof, that the same had not been reduced to possession, and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

299

The Court erred in not holding that the United States, complainant herein, is not the owner in fee simple, nor in possession of said lands or any part thereof, nor entitled to said lands, nor entitled to the possession of the same or any part of the same, which are sought to be purchased by these interveners and cross-complainants or any of them.

300

The Court erred in holding that the complainant is the owner in fee simple, or in possession of said lands or any part thereof, or entitled to the possession of the same or any part thereof.

301

The Court erred in holding that as a foundation for

a suit to quiet its title to either of said grants, or any part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company did not have the legal title to such grants.

302

The Court erred in holding that the title of the United States of America, of or in said lands or estates in lands sought to be purchased by these interveners and cross-complainants or any of them, be or is by said decree, quieted and confirmed, particularly as to any claim or claims of right, title and interest in, to or upon the same, in favor of these interveners and cross-complainants or any of them.

303

The Court erred in holding that the lands and estates in lands in the said decree described, and which were sought to be purchased by the interveners and cross-complainants herein or any of them, either in whole or in part, now are forfeited to or that the title to or any part thereof, has reverted to and now is re-vested in the United States of America, or that the same or any part thereof, now are the absolute property of the United States of America, or are free from any and all claim or claims of right, title or interest or lien in, to or upon the same or any part thereof, by or in favor of these interveners and cross-complainants or any of them.

304

The Court erred in holding that the United States, complainant herein, was entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants, any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants, and upon the terms provided in the act of July 25, 1866, and the act of April 10, 1869, amendatory thereof.

305

The Court erred in not holding that the United States, complainant herein, was not entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants and upon the terms provided in the act of July 25, 1866, and the act of April 10, 1869, amendatory thereof.

306

The Court erred in holding that the United States, complainant herein, was entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants, any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants and upon the terms provided in the act of May 4, 1870.

307

The Court erred in not holding that the United States, complainant herein, was not entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants, any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants, and upon the terms provided in the act of May 4, 1870.

308

The Court erred in holding that the United States, complainant herein, was entitled to any injunctive relief whatever as against these interveners and cross-complainants or any of them.

309

The Court erred in holding that the United States, complainant herein, was entitled to a decree restraining these interveners and cross-complainants, or any of them, from claiming or asserting any right, title interest or lien in, to or upon the lands sought to be purchased by these interveners and cross-complainants, respectively.

310

The Court erred in not holding that the United States, complainant herein, was not entitled to a decree restraining these interveners and cross-complainants or

any of them, from claiming or asserting any right, title or interest or lien in, to or upon the lands sought to be purchased by these interveners and cross-complainants, respectively.

311

The Court erred in holding that the title of complainant to the said lands, or any part thereof, should be quieted.

312

The Court erred in holding that the United States, complainant herein, was entitled to a decree quieting and confirming in it the title to the lands sought to be purchased by these interveners and cross-complainants, or any of them.

313

The Court erred in not holding that the United States, complainant herein, was not entitled to a decree quieting and confirming in it the title to the lands sought to be purchased by these interveners and cross-complainants, or any of them.

314

The Court erred in holding that the proviso in the amendatory act of April 10, 1869, was not a covenant, the acceptance and agreement to perform which was imposed by Congress as a condition precedent to the right of the Oregon and California Railroad Company to accept and become vested with the title to the lands

under the grant of 1866.

315

The Court erred in holding that the word "provided," introducing the proviso contained in the amendatory act of April 10, 1869, imported a condition subsequent, as

(a) The word "provided" is as appropriate for the purpose of importing a condition precedent as a condition subsequent, and

(b) Said proviso is coupled with a clause in said act contained permitting the grantees to accept said grant one year after the passage of said amendatory act, and

(c) Said proviso is not coupled with and does not bear any relation to the granting clause in said act amended.

316

The Court erred in not holding that the proviso in the amendatory act of April 10, 1869, was and is a covenant, the acceptance and agreement to perform which was imposed by Congress as a condition precedent to the right of the railroad company to accept and become vested with the title to the lands under the grant of 1866.

317

The Court erred in refusing to direct and decree a

specific performance on behalf of the United States, the complainant herein, and against the defendant, Oregon and California Railroad Company and the other defendants claiming by, through and under it, requiring said defendants to convey to these interveners and cross-complainants, the lands sought to be purchased by each respectively, upon payment of the purchase price therefor.

318

The Court erred in not holding that the defendant, Oregon and California Railroad Company and other defendants claiming an interest in said land, be required to convey said land to the interveners and cross-complainants applying to purchase the same.

319

The Court erred in holding that the defendant, Oregon and California Railroad Company, and each and all of the other defendants claiming an interest in said land, should not be required to convey said lands to the interveners and cross-complainants applying for the same.

320

The Court erred in holding that Congress did not intend by the act of April 10, 1869, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the grant of July 25, 1866, according to the terms of the proviso in said act of April 10, 1869.

321

The Court erred in not holding that Congress intended, by the act of April 10, 1869, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the grant of July 25, 1866, according to the terms of the proviso in said act of April 10, 1869.

322

The Court erred in holding that Congress did not intend by the act of May 4, 1870, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the West Side land grant, according to the terms of the provision in said act of May 4, 1870.

323

The Court erred in not holding that Congress intended, by the act of May 4, 1870, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the West Side grant, according to the terms of the provision in said act of May 4, 1870.

324

The Court erred in refusing to direct and decree a specific performance on behalf of the interveners and cross-complainants and each of them, against the defendant, Oregon and California Railroad Company, and the other defendants claiming by, through and un-

der it, requiring said defendants to convey to these interveners and cross-complainants, the lands sought to be purchased by said interveners and cross-complainants, respectively, as prayed for in their several bills.

325

The Court erred in holding that the provisions in each and both of said grants did not constitute contracts entered into by and between the Government and the railroad company, for the benefit of and enforceable by the interveners and cross-complainants.

326

The Court erred in holding that the proviso in the amendatory act of April 10, 1869,, requiring sales to settlers, was not a covenant to a use and did not impress a trust upon said lands for the benefit of those, who in good faith should apply to make settlement upon said land, and to purchase the same in quantities and at prices provided by said amendatory act.

327

The Court erred in not holding that the proviso in the amendatory act of April 10, 1869, requiring sales to settlers, was a covenant to a use and impressed a trust upon said lands for the benefit of those, who in good faith should apply to make settlement upon said land and to purchase the same in quantities and at prices provided by said amendatory act.

328

The Court erred in holding that the provision in the act of May 4, 1870, relating to sale of land to actual settlers, was not a covenant to a use and did not impress a trust upon said lands for the benefit of those who in good faith should apply to make settlement upon said land and to purchase the same in quantities and at prices provided by said act.

329

The Court erred in not holding that the provision in the act of May 4, 1870, relating to sale of lands to actual settlers, was a covenant to a use and impressed a trust upon said lands for the benefit of those who in good faith should apply to make settlement upon said land and to purchase the same in quantities and at prices provided in said act.

330

The Court erred in holding that the railroad company was not constituted a trustee for the benefit of the interveners and cross-complainants as *sestui que trustent*, under the provisions requiring sales of lands to settlers, referred to, in that

(a) "The nature and quality of their interests are not specific and definite," and, in that

(b) "They are not susceptible of identification as such," and

331

The Court erred in not holding that the railroad company, by the provisions in said grants contained, was constituted a trustee for the benefit of the interveners and cross-complainants as *sestui que trustent*, as

(a) The nature and quality of said interests under said grants are sufficiently specified and definite, and

(b) Their application to purchase and offer to settle upon the lands, is a sufficient identification.

332

The Court erred in holding that the offer and tender by the interveners and cross-complainants, to purchase the lands sought by them to be purchased of and from the Oregon and California Railroad Company, did not give to the respective interveners and cross-complainants a vested interest in said lands, in default of an acceptance of such offers and conveyances of said lands by the Oregon and California Railroad Company.

333

The Court erred in not holding that the offer and tender by the interveners and cross-complainants, to purchase the lands sought by them to be purchased of and from the Oregon and California Railroad Company, gave to the respective interveners and cross-complainants, a vested interest in said lands, in default of an acceptance of such offers and conveyances, by the

Oregon and California Railroad Company.

334

The Court erred in holding that the proviso in the act of April 10, 1869, is not sufficient definite and certain to be enforced as a covenant to a use or as a trust.

335

The Court erred in not holding that the proviso in the act of April 10, 1869, is sufficient definite and certain to be enforce das a covenant to a use or as a trust.

336

The Court erred in not holding that proviso in the act of April 10, 1869, requiring sales to settlers, is sufficiently definite and certain as a condition subsequent, to entitle the Government to a forfeiture for its breach, and that it is not sufficiently definite and certain to be specifically enforced as a covenant to a use, or as a covenant creating a

337

The Court erred in not holding that proviso in the act of April 10, 1869, for the sale of lands to actual settlers was intended by Congress as and was and is a covenant to a use only, and not a condition subsequent, as

(a) Said proviso contains specific and direct commands which were assented to, and performance thereof promised, by the Oregon and California Railroad Company, and

(b) Said proviso does not contain any clause providing for forfeiture or re-entry for breach of such covenant, and

(c) Said contract devotes said land to settlement and tillage and ultimate ownership by settlers.

338

The Court erred in holding that the proviso in the act of April 10, 1869, was not a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

339

The Court erred in not holding that the proviso in the act of April 10, 1869, was a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

340

The Court erred in holding that the United States, complainant herein, had any right, title or interest in or to the land embraced within and covered by the East Side grant, or any part thereof, except as a settler of the trust in said lands.

341

The Court erred in holding that the provision in the act of May 4, 1870, is not sufficiently definite and certain to be enforced as a covenant to a use or as a trust.

342

The Court erred in not holding that the provisions in the act of May 4, 1870, is sufficiently definite and certain to be enforced as a covenant to a use or as a trust.

343

The Court erred in holding that the provisions in the act of May 4, 1870, requiring sales to settlers, is sufficiently definite and certain as a condition subsequent, to entitle the Government to a forfeiture for its breach, and that it is not sufficiently definite and certain to be specifically enforced as a covenant to a use, or as a covenant creating a trust.

344

The Court erred in not holding that the provisions in the act of May 4, 1870, requiring sales to settlers, was intended by Congress as and was and is a covenant to a use only and not a condition subsequent, as

(a) Said provision contains specific and direct commands which were assented to and agreed to and performance thereof promised by the railroad company, and

(b) Said provision does not contain any clause providing for forfeiture or re-entry for breach of such covenant, and

(c) Said contract devotes said land to settlement and tillage and ultimate ownership by settlers.

345

The Court erred in holding that the provisions in the act of May 4, 1870, was not a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

346

The Court erred in not holding that the provision in the act of May 4, 1870, was a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

347

The Court erred in holding that the United States, complainant herein, had any right, title or interest in or to the land embraced within and covered by the West Side grant, or any part thereof, except as a settler of the trust in said lands.

348

The Court erred in holding that the United States, complainant herein, had any right, title or interest in and to the lands embraced within the East Side land grant or any part thereof, which it could enforce in this action, except such rights as it has as a settler of the trust in said lands, to enforce the provision of said trust, and such rights as it had and has to carry into effect in said suit, its public policies with relation to its granted lands, and

349

The Court erred in holding that the United States, complainant herein, had any right, title or interest in and to the lands embraced within the West Side land grant or any part thereof, which it could enforce in this action, except such rights as it had or has as a settler of the trust in said lands to enforce the provisions of said trust, and such rights as it had and has to carry into effect in said suit, its public policies with relation to its granted lands, and

350

The Court erred in not holding that this suit can only be maintained by complainant as one to compel the specific performance of a trust covenant, or to enforce a public policy, as

(a) Neither of said land grants contains a provision importing a condition subsequent, upon the breach of which, forfeiture could be had, and

(b) Congress has never declared a forfeiture of either of said land grants for breach of any condition subsequent, assuming that there is such condition in either of said land grants, and

(c) The fact of forfeiture has never been adjudicated by a court of law, and

(d) The defendant, Oregon and California Railroad Company holds the legal title to and possession of said lands, and

(e) Complainant having asked for forfeiture and in the alternative for specific performances, this suit cannot be maintained for forfeiture, since equitable relief may be granted by specific performance, and

(f) In view of specific performance a decree quieting title in the

351

The Court erred in not holding, on the assumption that the said proviso in the act of April 10, 1869, is a condition subsequent, for breach of which forfeiture might be had, that complainant elected, by filing its suit in equity, to waive forfeiture, and elected to specifically enforce said proviso as a covenant to a use only.

352

The Court erred in not holding, on the assumption that the said provision in the act of May 4, 1870, is a condition subsequent, for breach of which forfeiture might be had, that complainant elected, by filing its suit

in equity, to waive forfeiture, and elected to specifically enforce said provision.

353

The Court erred in holding that the interveners and cross-complainants were not such actual settlers as were contemplated by the acts of April 10, 1869, and May 4, 1870.

354

The Court erred in holding that these interveners and cross-complainants did not have vested interests in the lands sought to be purchased by them and each of them respectively, by reason of their various offers and tenders to purchase said lands upon the terms provided in the acts of April 10, 1869, and May 4, 1870.

355

The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to the decree rendered herein.

356

The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered.

357

The Court erred in holding that the evidence adduced in support of the complaint of the United States, complainant herein, was sufficient to entitle complainant to a forfeiture of the title to the lands sought to be

purchased by these interveners and cross-complainants or any of them.

358

The Court erred in not holding that the evidence adduced in support of the complaint of the United States, complainant herein, was not sufficient to entitle complainant to a forfeiture of the title to the lands sought to be purchased by these interveners and cross-complainants or any of them.

359

The Court erred in holding that the United States, complainant herein, was entitled to recover its costs and disbursements herein, or any costs or disbursements herein, against these interveners and cross-complainants, or any of them, and that a decree should be entered to that effect.

WHEREFORE, these interveners and cross-complainants, jointly and severally, pray that the said decision, judgment and decree and each and every part thereof, be reversed, and that the Court enter a decree on behalf of the interveners and cross-complainants as prayed for by them and each of them, respectively, in their several bills of intervention and cross-complaints heretofore filed herein,

And for such other, further or different relief as to this Court may seem just and equitable in the premises.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defend-
ants cross complainants, John H. Haggett,
Charles W. Mead, William Otterstrom,
Angus MacDonald, John T. Moan, Joseph
D. Hadley, Henry C. Ott, Fred L. Free-
bing, William Cain, R. T. Aldrich, and
O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners
William F. Slaughter and each and all of
the persons whose names are specifically
set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,
LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervenor Luther E. Trowbridge.

A. C. WOODCOCK,
GEO. W. WRIGHT,

Solicitors and Attorneys for the said intervenors George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,
JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,
CLAUDE STRAHAN,
LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thomson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

Due service of these, the foregoing and following Assignments of Error is admitted this 29th day of August, 1913.

MILLER, KING, LANE and
TRAFFORD,
DOLPH, MALLORY, SI-
MON and GEARIN,
JOHN M. GEARIN,

Attys. and Counsellors for Union Trust
Company.

Service of these, the foregoing and following Assignments of Error is hereby acknowledged, this 29th day of August, 1913.

PETER F. DUNNE, WM. D.
FENTON, and JAMES E.
FENTON,

Attorneys for Oregon and California Rail-
road Company, Southern Pacific Com-
pany, Stephen T. Gage, individually and
as Trustee.

Service of these, the foregoing and following Assignments of Error is hereby acknowledged, August 29, 1913.

A. W. LAFFERTY,
Solicitor for Cross-Complainants and In-
terveners.

Service of the foregoing Assignment of Errors is admitted this 29th day of August, 1913.

J. C. M'REYNOLDS,
Attorney General.

B. D. TOWNSEND,
Spl. Asst, to Atty. General.

By GLEN E. HUSTED,
Spl. Asst. to Atty. General.

CLARENCE L. REAMES,
United States Attorney

By ROBERT R. RANKIN,
Assistant United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon,
Clerk United States District Court.

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(Patent issued by the United States to Oregon & California Railroad Company, being third item to Exhibit No. 9 to the answer).

(Form of First Mortgage Construction Bonds of the Oregon Central Railroad Company (West Side).

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